

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SAMUEL T CAMPBELL
Claimant

APPEAL NO: 12A-UI-03842-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PORTICO HR
Employer

OC: 01/29/12
Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Refusal of Offer of Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 9, 2012 determination (reference 04) that held the claimant qualified to receive benefits even though he did not accept the employer's February 28, 2012 offer of work. The claimant participated in the hearing. When the hearing was scheduled, there was no indication the employer had provided the name of the employer's witness or the phone number before the scheduled hearing.

The employer called the Appeals Section after the hearing had been closed and the claimant had been excused. The employer requested that the hearing be reopened. Based on the employer's request to reopen the hearing, the administrative record, the administrative law judge concludes the claimant had good cause to decline the employer's February 28, 2012 offer of work.

ISSUES:

Did the employer establish good cause to reopen the hearing?

Was the employer's February 28, 2012 offer of work suitable for the claimant?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 29, 2012. The claimant's base period is October 1, 2010, through September 30, 2011. The wages he earned July 1 through September 30, 2012 was the claimant's high quarter. The employer reported the claimant wages of \$8,312.63 in this quarter. The claimant's average weekly wage for the current claim year is \$639.43.

On February 28, 2012, the employer, a staffing agency, offered the claimant an assignment as a data entry clerk. The job was to start on March 1 or 2, 2012. The job was for six weeks and the claimant would have been paid \$12 an hour. The claimant declined this job because he had earned \$13 at his previous job assignment and he wanted a temp-to-hire position.

Hearing notices were mailed to the parties on April 16, 2012. The claimant was called for the hearing because the records indicated he contacted the Appeals Section on April 24 and provided his phone number. There was no record that the employer had contacted the Appeals Section before the April 30 hearing. After the claimant had been excused and the hearing was closed, the employer called the Appeals Section.

The employer requested that the hearing be reopened. The employer did not have a control number but believed she called between April 18 and 20. The employer was told the Appeals Section staff would be asked to review their call logs. If a call log verified the employer had called in, the hearing would be reopened. Appeals Section personnel reviewed their individual call logs and no one had a record of the employer calling the Appeals Section before the scheduled hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The employer did not have a control number and the call logs each Appeals Section staff maintains did not indicate the employer had called before the April 30 scheduled hearing. As a result, the employer did not establish good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work. Iowa Code § 96.5(3)a. One factor that must be considered in determining whether the work offered is suitable is if the gross weekly wages for the work offered equal or exceed the following percentages of the individual's average weekly wages paid to the claimant in the quarter the claimant earned the highest base period wages.

1. One hundred percent, if the work is offered during the first five weeks of unemployment.
2. Seventy-five percent if the work is offered during the 6th through 12th week of unemployment.

Iowa Code § 96.5(3)a(1),(2).

Based on wages the claimant earned in the high quarter of his base period, to be suitable work as defined under the law, the offered job during the first five weeks the claimant was unemployed had to pay the claimant \$15.98 an hour. The employer's offered job paid \$12 an hour. The employer offered the claimant the job during the fifth week he was unemployed, therefore, the job the employer offered the claimant on February 28 is not deemed suitable in accordance with the law.

If the offer of work had been made the next week, the wages would have met the requirements of law by paying the claimant 75 percent of his average weekly wage in the high quarter of his base period. Based on the law, Iowa Code § 96.5(3)a(1), the wages offered were not suitable. Therefore, the claimant is not disqualified from receiving benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's April 9, 2012 determination (reference 04) is affirmed. The job the employer offered on February 28, 2012, was not suitable for the claimant since it was offered during his fifth week of unemployment and did not pay him \$15.98 an week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs