

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER S HARGER
Claimant

APPEAL NO. 11A-EUCU-00559-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 11/14/10
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 20, 2011, reference 02, that concluded the claimant was not subject to disqualification for refusing work. A telephone hearing was held on July 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kayla Neuhalfen participated in the hearing on behalf of the employer with a witness, Amy Frederes. Exhibit One was admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's average weekly wage based on the highest quarter of earning in his base period was \$468.00. The records also show the claimant filed an additional claim for benefits effective February 20, 2011, and reopened the claim effective March 20, 2011, to receive Emergency Unemployment Compensation. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 16, 2010, to February 16, 2011. The claimant's average weekly wage based on the highest quarter of earning in his base period was \$468.00.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment for the employer at Pioneer Hybrid from December 16, 2010, to February 16, 2011. He completed that assignment and the employer had no immediate work for him.

The claimant filed an additional claim for benefits effective February 20, 2011, and reopened the claim effective March 20, 2011, to receive Emergency Unemployment Compensation.

On May 25, 2011, the employer's branch manager phoned the claimant because she had a full-time job opening for a concrete construction worker with a rate of pay of \$10.00 hour that was to start on May 31, 2011. The rate of pay was comparable to the going rate of pay for similar work in the area. The work was in Schaller, Iowa, about 30 miles from the claimant's residence.

During the call, the manager asked the claimant if he had concrete experience. He stated he had no job experience in the field but had done some concrete work personally. The manager then told him that she had an opening for a concrete worker and asked if he was interested. The claimant said he was interested, but told the manager that he had an appointment later that day to have a mechanic check out his transmission. He said he would let her know the outcome. Later in the day, the manager called the claimant again. He told the manager that he was waiting to hear from the mechanic about his car and would let her know on May 26.

In the morning on May 26, the mechanic told the claimant that he needed his transmission replaced. The mechanic did not know when the repair would be completed. Afterward, the claimant called the manager and informed her about the situation with the car. The manager asked the claimant whether he would be able to start the job on May 31. The claimant said he did not know and offered to come into the employer's office to get more details about the job. The manager told him she needed to know whether he was taking the job. The claimant said he was not sure his car would be done. The manager said she was going to put down that he was declining the job. The claimant was not told the rate of pay or client business name.

The claimant has been actively looking for suitable work throughout the time of his unemployment and has been able to work and available for work in his local area. As of the date of the hearing, the claimant had secured full-time work.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual....

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is

suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (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 sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

871 IAC 24.24(1)a provides:

- (1) Bona fide offer of work.
 - a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The weekly wage offered of \$400 would meet the wage standard of 75 percent of his average weekly wage, which calculates to \$351. The facts show the rate of pay to be comparable to the going rate of pay for similar work in the area.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony regarding the conversation he had with the branch manager. I conclude there was no definite refusal in this case, as the claimant simply told the manager that he could not guarantee that his car would be done when the position was to start. The manager said she would treat it as declining the job.

The law requires a claimant to be able to work, available for work, and earnestly and actively seeking work. Iowa Code § 96.4-3. The fact establish the claimant has been actively looking for suitable work throughout the time of his unemployment and has been able to work and available for work in his local area. The fact that he was unsure about starting an out-of-town job at the end of May does not establish he was unavailable for work.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges to the employer's account will be determined at that time based on the circumstances at that time.

DECISION:

The unemployment insurance decision dated June 20, 2011, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw