

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD A NELSON
Claimant

APPEAL NO. 08A-UI-00583-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE WOOD SHAVINGS INC
Employer

OC: 12/02/07 R: 02
Claimant: Appellant (4-R)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Donald A. Nelson (claimant) appealed a representative's January 15, 2008 decision (reference 02) that concluded he was not eligible to receive benefits because he refused an offer of suitable work from Hawkeye Wood Shavings, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2008. Neither party participated in the hearing.

The first time the employer contacted the Appeals Section was an hour after the scheduled hearing. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Was the claimant able to and available for work the week ending December 29, 2007?

Did the claimant refuse an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of December 2, 2007. The claimant previously worked for the employer, but was laid off when the employer downsized its operation. The claimant's last day of work for the employer was April 17, 2007.

The employer contacted the claimant on December 26, 2007 and asked the claimant to report to work the next day at 8:00 a.m. The claimant did not call or report to work the next day. On December 27, the claimant did not have transportation from his residence to the employer's business. A week later the claimant contacted the employer about working. He then learned the job had been filled by another person.

When the employer received the hearing notice prior to January 31, the employer did not read or follow the hearing instructions. The employer assumed they would be called for the hearing because for the fact finding interview they provided their fax number and phone number. The employer waited an hour to call the Appeals Section because when they participated in a fact-finding interview, they were contacted 45 minutes late. The employer made a request to reopen the 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 incorrectly assumed they would be called for the hearing when they did not follow the hearing notice instructions. Even though the employer received the hearing notice prior to the scheduled 11:00 a.m. hearing on January 31, 2008, the employer did not contact the Appeals Section until 12:00 p.m. on January 31, 2008. Since a failure to read and follow the hearing notice instructions does not constitute good cause to reopen a hearing, the employer's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if he refused an offer of suitable work without good cause. Iowa Code § 96.5-3-a. Before a claimant can be disqualified for refusing an offer of suitable work, he must be able to and available for work. 871 IAC 24.24(4). The administrative record establishes the claimant was not available to work because he did not have transportation to the employer's work site. 871 IAC 24.23(4).

Each week a claimant files a claim for benefits, he must establish he is able to and available for work. Iowa Code § 96.4-3. The claimant was not available for work the majority of the week ending December 29, 2007. Therefore, he is not eligible to receive benefits for this week.

The administrative record indicates the claimant had transportation or made transportation arrangements the following week, because he called the employer about the job. As of December 30, 2007, the claimant is available for work and eligible to receive benefits, provided he meets all other eligibility requirements.

Since the claimant filed a claim for the week ending December 29, an issue of whether he has been overpaid for this week is remanded to the Claims Section.

DECISION:

The employer's request to reopen the hearing is denied. The representative's January 15, 2008 decision (reference 02) is modified in the claimant's favor. The claimant was not available to work the week ending December 29, because he did not have transportation to the employer's workplace. As a result of the claimant's unavailability, the issue of whether he refused an offer

of suitable work cannot be addressed. The claimant is not eligible to receive benefits for the week ending December 29, 2007. He is eligible to receive benefits as of December 30, 2007. The issue of whether the claimant has been overpaid benefits for the week ending December 29, 2007, is remanded to the Claims Section.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw