

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

EARL JONES
425 – 4TH AVE N
CLINTON IA 52732

L A LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265

Appeal Number: 06A-UI-07323-DT
OC: 06/18/06 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

L. A. Leasing, Inc. (employer) appealed a representative's July 17, 2006 decision (reference 01) that concluded Earl Jones (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2006. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Dawn Fulton. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant refuse an offer of suitable work without good cause? Is he able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant completed a job application with the employer in December 2004. He began taking assignments with the employer on February 24, 2005. His most recent assignment began on October 17, 2005. His last day on the assignment was June 14, 2006.

When the claimant completed his job application in December 2004 he checked availability for either first or second shift. On the assignments he was actually given, he worked first shift but for an assignment that lasted about two months, from August 10 to October 11, 2005, where he worked second shift.

The claimant established an unemployment insurance benefit year effective June 18, 2006. His weekly benefit amount was calculated to be \$224.00 based upon an average weekly wage from the high quarter of his base period of \$398.06, an average of \$9.95 per hour.

On July 6, 2006, Ms. Fulton, account manager in the employer's Clinton, Iowa office, called and left a message for the claimant offering him a position at the rate of \$8.50 per hour on a second shift. The claimant responded and declined, indicating that at that point he needed first shift work only due to transportation issues.

REASONING AND CONCLUSIONS OF LAW:

The initial issue in this case is whether the claimant refused a suitable offer of work.

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. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

While the claimant did not cite the hourly wage as a reason for his declining the offer, by statute the claimant cannot be disqualified for refusing an offer which is not "suitable," and the statute defines "suitable" to include at a minimum that the wage meet the necessary percentages of the claimant's average weekly wage. For the claimant, as of July 6, 2006, still within the first five weeks of becoming unemployed, the offer had to be at least 100 percent of the average weekly wage, or \$9.95 per hour. Since it was not, it was not "suitable," and his refusal cannot be disqualifying.

The remaining question is whether by now restricting his availability to first shift whether the claimant is still able and available for work.

871 IAC 24.22(2) provides in pertinent part:

Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

The claimant's wage credits were earned almost exclusively working first shift; his decision to now restrict his availability to first shift leaves him still available for work on the same basis on which his wage credits were earned. He is able and available for work as of July 6, 2006.

DECISION:

The representative's July 17, 2006 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work. He is able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs