

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA K WALKER
Claimant

APPEAL NO. 10A-UI-12648-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PDCM INS INC
Employer

OC: 06/27/10
Claimant: Respondent (1)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, PDCM, filed an appeal from a decision dated September 3, 2010, reference 03. The decision allowed benefits to the claimant, Barbara Walker. After due notice was issued a hearing was held by telephone conference call on October 26, 2010. The claimant participated on her own behalf. The employer participated by Human Resources Director Patricia McKinney.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Barbara Walker filed a claim for unemployment benefits with an effective date of June 27, 2010. As of that date her average weekly wage was \$599.00 during her base period.

Prior to the filing of the claim she was offered a job with PDCM for 35 hours per week at \$14.00 per hour, without benefits of any kind. She refused the offer of work.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The claimant did refuse the offer of work but disqualification may not be imposed for two reasons. The salary was less than 100 percent of her average weekly wage during the base period and under the provisions of the above Code section, this is automatically an unsuitable job. Also, the offer of work and the refusal were made prior to the effective date of her unemployment claim. This is not a disqualifying work refusal and disqualification may not be imposed.

DECISION:

The representative's decision of September 3, 2010, reference 03, is affirmed. Barbara Walker is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs