

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN D ROSBURG

Claimant

APPEAL NO. 07A-UI-10314-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS ENTERPRISES

Employer

**OC: 10/22 06 R: 01
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

Genesis Enterprises (employer) appealed a representative's October 31, 2007 decision (reference 03) that concluded Dawn Rosburg (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 27, 2007. The claimant participated personally. The employer participated by Kevin Connot, Owner.

ISSUE:

The issue is whether the claimant refused an offer of suitable work and whether she was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in May 2007, as a full-time sewing machine operator. The work slowed down in August 2007. On August 24, 2007, the employer met with the claimant. He said that work had slowed down and only part-time work was available. He did not offer the claimant work because he knew she needed full time hours. The employer wrote the claimant a letter of recommendation for future positions.

The claimant became ill and unable to work beginning on September 23, 2007. She went in the hospital on October 9, 2007. She has not been released to return to work by her physician but feels well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not refuse an offer of suitable work.

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 employer did not offer work for the claimant. No offer of work was made to the claimant. The claimant is qualified to receive benefits so long as she otherwise eligible.

For the reasons that follow the administrative law judge concludes the claimant is not able to work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was ill from September 23, 2007, to the present. She is considered to be unavailable for work after September 23, 2007. The claimant is disqualified from receiving unemployment insurance benefits beginning September 23, 2007, due to her unavailability for work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's October 31, 2007 decision (reference 03) is modified in favor of the appellant. The claimant did not refuse an offer of suitable work but she is disqualified from

receiving unemployment insurance benefits because she is not able to work. The claimant is overpaid benefits in the amount of \$333.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css