

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE E LAMPE
Claimant

APPEAL NO. 09A-UI-14760-VST

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

TEMPRO SERVICES INC
Employer

OC: 06/28/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The revised decision, Nunc Pro Tunc, is being issued to clarify the decision issued on October 29, 2009. An error was made in the decision concerning the claimant's disqualification for benefits. Changes are made to indicate the original decision of the fact finding is reversed and the claimant is eligible for benefits.

Claimant filed an appeal from a decision of a representative dated September 17, 2009, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 28, 2009. Claimant participated. Employer participated by Colleen McGuinty, unemployment benefits administrator, and Mary Jo Gehn, account manager. The record consists of the testimony of Candance Lampe; the testimony of Colleen McGuinty; and the testimony of Mary Jo Gehn. Official notice is taken of the administrative file.

ISSUE:

Whether the claimant is able and available for work; and
Whether the claimant refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a temporary employment agency. The claimant made an application for temporary work on February 14, 2009, and was given an assignment at Gastro-Consultants as a credentialing clerk on April 20, 2009. This assignment lasted until June 26, 2009.

The claimant also accepted temporary assignments from other employers. On August 3, 2009, Mary Jo Gehn, account manager for the employer, called the claimant and offered her a position as a full-time accounting clerk with Carelton Life Support. The claimant refused to take the

assignment because she was starting another job on August 4, 2009, and was unable to work both jobs.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The evidence established that the claimant was offered an assignment as a full-time accounting clerk by the employer on August 3, 2009. The claimant refused the assignment because she had taken another job with another employer and was unable to work both jobs. While the claimant may not have been available for work while she was working another job, she is not disqualified for benefits if she is otherwise eligible.

DECISION:

The decision of the representative dated September 17, 2009, reference 03, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs