

**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**

**JENNIFER A DUNKEL  
124 – 6<sup>TH</sup> AVE SW  
CEDAR RAPIDS IA 52404**

**SHAKESPEARE FLOWERS INC  
830 – 33<sup>RD</sup> AVE SW  
CEDAR RAPIDS IA 52404**

**JOHN TITLER  
ATTORNEY AT LAW  
PO BOX 168  
CEDAR RAPIDS IA 52406**

**Appeal Number: 04O-UI-09273-HT  
OC: 02/22/04 R: 03  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The claimant, Jennifer Dunkel, filed an appeal from a decision dated June 18, 2004, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 28, 2004. The claimant participated on her own behalf. The employer, Shakespeare Flowers, participated by Owner Alicia Shakespeare and was represented by John Titler.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jennifer Dunkel had been employed by

Shakespeare Flowers. There was a separation from employment early in 2004. Owner Alisa Shakespeare sent the claimant her final paycheck on March 23, 2004, and enclosed a letter offering the claimant her position back. The claimant contacted Ms. Shakespeare on April 9, 2004, and asked about the letter. The conversation lasted less than a minute and could reach a conclusion, Ms. Dunkel's phone cut out. She never returned the call to discuss the job offer further.

The claimant believed the job offer was going to be discussed at the hearing scheduled for April 14, 2004, on the issue of the separation from employment. When the job offer was not discussed at that hearing, Ms. Dunkel still did not contact the employer. She assumed the matter was going to be "dealt with" at some unspecified, as-yet-unscheduled hearing in the future. It was not until after the decision was issued in this case on June 18, 2004, that the claimant attempted to discuss returning to her previous position at Shakespeare Flowers. She did not talk to the owner, but to an assistant, who said she was not sure but she believed the position had been filled. Ms. Dunkel hung up before talking with the owner.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant had been informed her position was available to her as of April 9, 2004. When she called to discuss it, it was her phone which "went dead." That being the case, the administrative law judge believes the claimant was obliged to reestablish contact with the employer if she wished to accept the job offer. Her failure to do so was based on the belief the matter would be dealt with at the appeal hearing on the separation, but even after the hearing, when the offer had not been discussed, she still made no attempt to contact the employer. Her assumption that it would be "dealt with" at the instigation of someone else at some other hearing is not reasonable.

The administrative law judge concludes the job offer was suitable as it was the claimant's prior position at the same hours and wages, and her failure to make a good-faith attempt to talk to the employer after her phone cut out, must be construed as a refusal of work. She is disqualified.

**DECISION:**

The representative's decision of June 18, 2004, reference 03, is affirmed. Jennifer Dunkel is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/tjc