

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
Website: eab.iowa.gov**

HEATHER S ROTH

Claimant

: **APPEAL NUMBER:** 23B-UI-09107

: **ALJ HEARING NUMBER:** 23A-UI-09107

:

and

:

EMPLOYMENT APPEAL BOARD

:

DECISION

DIAMOND JO WORTH LLC

:

:

Employer

:

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-3 96.4-3

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant filed her claim for unemployment insurance benefits effective June 11, 2023, when she was laid off from her employment at Larsen Manufacturing. The Claimant's base period includes wage credits earned during the four quarters of 2022. The Claimant's high quarter was the first quarter of 2022 and she earned \$17,545. The Claimant's average weekly wage (AWW) during that time was \$1,349.61.¹

On July 27, the Claimant applied for a position as a casino host with Diamond Jo Worth LLC (Diamond Jo's). On August 3, during her eighth week of unemployment, the Claimant was offered the salaried position earning \$19 and "some change." (Claimant's Testimony.) Which means, the weekly salary Diamond Jo's offered would be between \$760 per week, if the pay was \$19 an hour, and \$799.60 per week, if the pay was \$19.99 an hour. The Claimant declined the position based on the pay and her doubts about the ability to do the job.

¹ The AWW is determined by dividing the high quarter of wages (\$17,545) by 13 weeks in the quarter.

REASONING AND CONCLUSIONS OF LAW:

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. ... 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".

Iowa Code section 96.5(3) provides, in pertinent part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

a. (1) 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:**

(a) One hundred percent, if the work is offered during the first week of unemployment.

(b) Ninety percent, if the work is offered during the second through the third week of unemployment.

(c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.

(d) **Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.**

(e) Sixty percent, if the work is offered after the eighth week of unemployment.

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

Iowa Admin. Code r. 871-24.24(15)i provides:

Failure to accept work and failure to apply for suitable work.

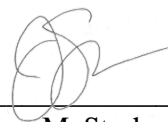
(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

i. Whether work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

In this case, the offer Diamond Jo's made to the Claimant was not suitable for purposes of determining eligibility for unemployment insurance benefits. During the eighth week of unemployment, Diamond Jo's offered the Claimant a weekly salary between \$760 and \$799.60 per week. Seventy percent of the Claimant's AWW in her high quarter is \$944.72,² which is higher than the salary Diamond Jo's offered. Therefore, for purposes of determining eligibility for unemployment insurance benefits, the offer was not suitable and benefits are allowed.

DECISION:

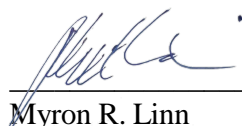
The administrative law judge's decision dated October 16, 2023 is **REVERSED**. The Employment Appeal Board concludes that the Claimant did not decline a suitable offer of work. Accordingly, benefits are allowed.



James M. Strohmman



Ashley R. Koopmans



Myron R. Linn

SRC/fnv

DATED AND MAILED: DEC 05 2023

² This is calculated by multiplying \$1,349.61 by 0.7.