

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

BETTY J ELGIN
1765 WHITE POLE RD
ADAIR IA 500002

WEST CENTRAL VALLEY SCHOOLS
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01712-B4T
OC: 01/04/04 R: 01
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Whether claimant refused to accept suitable work
Section 96.3-7 – Whether claimant is overpaid benefits

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 12, 2004, reference 03, that held, in effect, Betty J. Elgin did not refuse to accept an offer of suitable work with West Central Valley Schools on January 13, 2004. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on March 5, 2004 pursuant to due notice. Betty J. Elgin participated. Sharon Rote, Business Manager and School Board Secretary participated on behalf of West Central Valley Schools.

FINDINGS OF FACT:

The administrative law judge, having examined the entire evidence in this matter, finds that: Betty J. Elgin was previously employed with West Central Cooperative, Adair-Casey Community Schools and the Community Care Center located near the claimant's residence.

The claimant's last period of employment was with Community Care Center during the third quarter of 2003. The claimant's employment with Community Care Center commenced on August 11, 2003 and ended on December 28, 2003. The claimant then filed an initial claim for benefits having an effective date of January 4, 2004. The claimant's weekly benefit amount was determined to be \$227.00 per week and her average wage was determined to be \$384.41. Subsequently, the claimant held a conversation with Teresa Nook, Secondary Principal at Redfield, Iowa who informed her that there was employment available to her on a 35-hour workweek basis regarding providing assistance to children. Teresa Nook did not inform the claimant of the wages that were involved and advised her to contact Sharon Rote, Business Manager and School Board Secretary. On January 12, 2004, the claimant held a conversation with Sharon Rote. The position was discussed and the claimant was informed that her wages would be \$8.07 per hour for a work shift that was either stated to be 32.5 hours or 35 hours per week.

The claimant initially accepted the position and filled out the proper applications. The claimant was then informed that 32.5 hours would be the workweek that she would be assigned to.

The claimant then left the facility and returned a call to Principal Teresa Nook, and stated that she would not accept the position because the wages were not equal to her average weekly wage and substantially less than she was paid at her last job.

In addition, the claimant declined because of the distance, which was 30 miles to and from her home.

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.

The evidence in the record clearly establishes that the claimant was made an offer of work within a short period following the filing of her initial claim for benefits. The offer of work was at a wage substantially less than her average wage, which was determined to be \$384.41.

The wage offered of \$8.07 per hour as an employee with the Redfield, Iowa, West Central Valley Schools facility was substantially less than 100 percent of her average weekly wage.

In addition, the claimant refused the job offer because the location of the workplace was 30 miles in distance from her home and she would be required to pay all the costs of transportation.

The wage rate of \$8.07 per hour would result in \$242.19 for a 30-hour workweek and \$262.29 for a 32.5-hour workweek.

The administrative law judge concludes that Betty J. Elgin did not refuse to accept an offer of suitable work with West Central Valley School in Redfield, Iowa, on January 13, 2004 and benefits are allowed provided the claimant is otherwise eligible within the intent and meaning of Iowa Code Section 96.5-3-a.

DECISION:

The unemployment insurance decision dated February 12, 2004, reference 03, is affirmed. Unemployment insurance benefits are allowed Betty J. Elgin provided she remains otherwise eligible under the provisions of the Iowa Employment Security Law.

kjf/b