

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

RAMONA R WINTER
801 STUART ST APT 8
ADAIR IA 50002

NURSE FORCE INC
2900 WESTTOWN PKWY #1
WEST DES MOINES IA 50266-1315

EDWIN N MCINTOSH
ATTORNEY AT LAW
DORSEY & WHITNEY LLP
801 GRAND AVE
STE 3900
DES MOINES IA 50309-2790

Appeal Number: 05A-UI-00721-H2
OC: 11-21-04 R: 02
Claimant: Respondent (2)

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)

Iowa Code §96.5(3)a – Work Refusal
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2005, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on February 15, 2005. The claimant did participate. The employer did participate through Tina Inman, Staffing Coordinator, Jerri Stanley, Finance Officer and Accountant and Office Manager and was represented by Edwin N. McIntosh, Attorney at Law. Employer's Exhibits One and Two were received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had been previously employed as a home aid. She worked at one assignment from November 8, 2002 until November 8, 2004. While working at that assignment the claimant lived in Adair and Guthrie Iowa. When the claimant applied for work with the employer she was told that placements were made in the Des Moines area and surrounding suburbs. At her first assignment the claimant had to drive approximately forty-nine or fifty-four miles to reach her assignment. The employer made an offer of work to claimant on December 17, 2004. The claimant was to assist a family with taking care of a family member at his home. The claimant was to be paid \$10.50 per hour for a shift from 3:00 p.m. to 10:00 p.m. The claimant would work approximately five shifts per week for a total of approximately \$367.50 per week. The claimant's average weekly wage was \$342.00. The claimant refused because she believed that she would have to turn or lift a 180-pound man by herself and because she did not want to drive from Adair to Des Moines. The job assignment was at most seven miles further than her previous assignment. The employer credibly testified that no employee is ever expected to lift a 180-pound person by herself.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work.

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 offer was suitable as it was work similar to that which the claimant had performed for two years previously. Additionally, the claimant knew when she applied that work assignments were made in Des Moines and the surrounding suburbs. The claimant was not going to be required to lift a 180 pound man by herself as the employer never requires that level of strenuous physical work from any of its employees. The wages offered the claimant exceeded her average weekly wage. The claimant did not have a good-cause reason for the refusal. Benefits are denied effective December 17, 2004.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 20, 2005, reference 03, decision is reversed. Claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1930.00.

tkh/pjs