

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

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AMENDED
Appeal Number: 05A-UI-05389-LT
OC: 05-16-04 R: 02
Claimant: Respondent (2R)

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
Iowa Code §96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the May 12, 2005, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on July 20, 2005. Claimant did participate. Employer did participate through Melissa Arneson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 27 employer offered claimant a full time job on first shift earning \$8.46 as a clerk for the State of Iowa. Claimant declined since she believed herself to be unqualified for the data entry, but there were no minimum keyboarding skills required and on the job training would be provided. Claimant had worked as an accounting clerk and Secretary I before this offer.

Employer made offers as well. On May 11 as a secretary for a lawyer earning \$7.49 per hour which she declined and made no further contact with employer. On June 2 employer left voice mails about a secretary position with the State of Iowa but claimant never called back. On June 6 employer contacted claimant and offered her a one-day assignment June 20, which she accepted but was a no-call/no-show. At that point, employer terminated the employment relationship.

Claimant has received unemployment benefits since filing a claim with an effective date of May 16, 2005 and since the week ending April 30, 2005 on the May 16, 2004 claim year. Claimant's average weekly wage is \$245.67 on this claim.

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 did exceed her average weekly wage and claimant did not have a good-cause reason for the refusal. Employer was in a better position to determine if claimant was qualified for the work offered. Since there were no minimum requirements and on the job training was offered, the offer was suitable. Benefits are denied.

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

DECISION:

The May 12, 2005, reference 04, 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. Claimant is overpaid benefits in the amount of \$1,863.00.

REMAND:

The separation issue delineated in the findings of fact is remanded for an initial review and determination.

dml/kjw/kjf