

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MELISSA A TUTTLE
Claimant

APPEAL NO. 13A-UI-06881-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 01/13/13
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 6, 2013, reference 09, that concluded the claimant was not disqualified for failing to accept work offered on May 22, 2013. A telephone hearing was held on July 11, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Chad Baker participated in the hearing on behalf of the employer with a witness, Sammy Teel. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show a decision was issued on June 6, 2013, reference 08, that concluded the claimant was not disqualified for failing to accept work offered on May 13, 2013, but was not appealed by the employer. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. She worked for the employer from December 22, 2011, to August 2, 2012, with the last assignment at NIS Inc. at a rate of pay of \$9 per hour. The claimant worked a second-shift position because her four-year-old child's father worked until 2 p.m. and was available to watch the child.

The claimant filed a new claim for unemployment insurance benefits effective January 13, 2013, after her employment at United Parcel Service ended. She also worked second shift at UPS. Her average weekly wage based on the high quarter of wages in her base period was \$155.70.

Late afternoon on May 13, 2013, the claimant was offered a first-shift production worker position at Nestle-Purina paying \$9 per hour. The work was to start the morning of May 14. It was an eight-hour shift and was to last until at least May 17. The claimant told the recruiter that she

would check with her grandmother to see if she could babysit for her daughter. The claimant called and left a message for her grandmother. She called the employer back to let her know that she had to wait to hear back from her grandmother. She was told the employer had filled the job.

Late afternoon on May 22, 2013, the claimant was offered a first-shift packer position at Group O paying \$8.50 per hour. The work was to start the morning of May 23 at 7 a.m. It was an eight-hour shift, working six days per week, and was a temp-to-hire position, which meant Group O could have later hired her as its employee. The claimant again told the recruiter that she would need to check with her grandmother to see if she could babysit for her daughter. The claimant called and left a message for her grandmother and called the recruiter back to let her know that she had to wait to hear back from her grandmother. The recruiter told her that she had to look out after the client business and fill the position.

A decision was issued on June 6, 2013, reference 08, that concluded the claimant was not disqualified for failing to accept work offered on May 13, 2013, but was not appealed by the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

Iowa Code § 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....

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.

Evidence was presented about the offer of work made on May 13, 2013, but the employer did not appeal the decision issued on that work offer. I have included findings on this issue for purposes of deciding whether the claimant was available for work.

I conclude the work was suitable under Iowa Code § 96.5-3-a, but the claimant had good cause to fail to accept the work because she was given substantially less than 24-hours' notice to arrange for a babysitter, which was not an adequate period of time.

The unemployment insurance rules provide that a claimant is considered available for work if she is available for the same hours as her wage credits were earned, and there is a reasonable expectation of securing work during those hours. 871 IAC 24.22(2)a. In the claimant's case, she was available to work second shift, which was the shift she worked in her last jobs. In addition, the claimant was willing and available to work a first-shift job if she had been given enough time to find a babysitter.

DECISION:

The unemployment insurance decision dated June 6, 2013, reference 09, is affirmed. The claimant is qualified to receive unemployment insurance benefits as of May 22, 2013, if she is otherwise eligible. She remains disqualified effective June 23, 2013, due to a decision issued on July 1, 2013.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs