

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL A OFFERMAN**  
Claimant

**APPEAL NO. 07A-UI-06652-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**  
Employer

**OC: 05/27/07 R: 03  
Claimant: Respondent (1)**

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 22, 2007, reference 03, that concluded the claimant was not subject to disqualification for failing to accept work. A telephone hearing was held on July 23, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Sadie Henry participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Did the claimant fail to accept an offer of suitable work without good cause?

**FINDINGS OF FACT:**

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. When the claimant was hired, she signed a statement that she would be considered to have voluntarily quit employment if she did not contact the employer within three working days after the completion of a job assignment and request a new assignment. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant worked on assignments from September 18, 2006, to November 21, 2006. She was removed from the assignment on November 21, 2006, because the client business was dissatisfied with the speed at which she worked.

When the claimant contacted the employer next after November 21, 2006 is unknown, but she was not treated as an employee who had quit employment. She was offered and accepted an assignment at General Mills that was to start on November 29.

On November 29, 2006, the claimant was to begin a part-time assignment at General Mills in Cedar Rapids. The job paid \$7.00 per hour. The number of days of work or hours of work

varied from week to week depending on General Mills needs but the employer was not guaranteeing 40 hours per week of work. The claimant failed to report to work or call the employer regarding her absence. The employer, however, did not discharge her from employment for failing to call in or consider the claimant to have quit employment. She was considered as active for future assignments.

The next contact that the employer had with the claimant was on January 14, 2007, when she called in and accepted a long-term assignment at General Mills in Cedar Rapids, which was supposed to begin on January 15, 2007.

The claimant failed to report to work as scheduled on January 15. She called for that shift and stated that she could not work because her child was sick. There was nothing said about her reporting to work the next day or later that week. The employer has not called the claimant since that time about any assignments. The claimant has not worked since November 21, 2006.

The claimant filed a new claim for unemployment insurance benefits with effective date of February 26, 2006. Her average weekly wage based on her highest quarter wages during the base period was \$527.04. The benefit year on the claimant was from February 26, 2006, to February 25, 2007. She stopped filing weekly claims in April 2006. She filed a claim for a second benefit year effective May 27, 2007.

#### **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer, who are discharged for work-connected misconduct, or who refuse suitable work without good cause. Iowa Code sections 96.5-1, 96.5-2-a, and 96.5-3.

The problem in this case is how to characterize the potential separations from work that occurred on November 21, 2006; November 29, 2006, and January 15, 2007. The matter is further complicated by the fact that the claimant failed to participate in the hearing to give her side of what happened.

First, the separation on November 21 was not a discharge for work-connected misconduct as defined by 871 IAC 24.32(1), which requires willful and substantial misconduct. Instead, she was removed from the assignment due to unsatisfactory work performance. Iowa Code section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements. The problem here is that when Sadie Henry was asked whether the claimant contacted the employer within three days, she did not answer the question directly but instead indicated that there was contact after November 21 that led to the job being offered at General Mills. Consequently, I conclude that the separation from employment on November 21 was not disqualifying.

The claimant accepted assignments that were to begin on November 29, 2006, and January 15, 2007. The question is whether this situation amounts to a voluntarily quit of employment since the claimant was offered and accepted the temporary part-time jobs or whether it should be treated as a failure to accept work since the claimant never actually worked on the job. The unemployment insurance rules provide that an election not to report for a new assignment of

temporary work shall not be construed as a voluntary leaving of employment. Instead, the issue of a refusal of an offer of work shall be adjudicated. 871 IAC 24.26 (19).

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

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....

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.

The claimant is not subject to disqualification for failing to accept the positions at General Mills since the wages from the assignment would have been less than \$342.58 per week, which would be the minimum acceptable wage under the formula found in Iowa Code section 96.5-3-a since it was offered after the eighteenth week of her new claim for benefits filed effective February 26, 2006, and was made during the benefit year of February 26, 2006, to February 25, 2007. See 871 IAC 24.24(8), which provides that a disqualification can be imposed only if offer and refusal of work takes place during the individual's benefit year.

Since the claimant stopped filing weekly claims for unemployment insurance benefits in April 2006 there is no issue regarding the claimant's availability for work as of November 2006 and January 2007.

**DECISION:**

The unemployment insurance decision dated June 22, 2007, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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