

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY A SEWEJKIS
Claimant

APPEAL NO. 09A-UI-04243-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 01/18/09
Claimant: Appellant (5)

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 claimant appealed an unemployment insurance decision dated February 26, 2009, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 13, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Rankin participated in the hearing on behalf of the employer. The parties agreed and waived the notice required by law of the issues of whether the claimant refused suitable work without good cause and was available for work. The issue of whether the appeal was timely was listed on the hearing notice in error as the claimant filed her appeal before the deadline for appealing.

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 claimant worked full time for the employer from October 1, 2007, to July 10, 2008, at its Clinton, Iowa, plant when she was laid off due to lack for work. There was no definite date on which the employer was going to call the claimant. During the time the claimant was working for the employer she was also working part-time at McDonald's in DeWitt, Iowa, where she lives.

On September 12, 2008, the claimant declined to accept an offer of work made by the employer to return to her job at the Clinton plant. She would have been working the same hours she was working before and would have been paid 20 cents more per hour than when she was laid off. The claimant declined the work because she did not have a ride to work, which is about 18 miles from home. The claimant had a ride to work when she worked there before, but the person who gave her the ride moved.

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 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.

The claimant was offered suitable work. But she had good cause to decline the work because she did not have transportation to the plant. Her lack of transportation, however, raises an issue as to whether she was available to work.

The unemployment insurance rules provide that a claimant is unavailable for work if she does not have transportation from her residence to the area of her usual employment, 871 IAC 24.23(4). I conclude in this case the claimant's area of usual employment included the Clinton area, where she had previously worked for the employer. She, therefore, was unavailable for work effective September 7, 2008, which is the Sunday before the date that she declined work in Clinton.

DECISION:

The unemployment insurance decision dated February 26, 2009, reference 01, is modified with no change in the outcome. The claimant failed to accept an offer of suitable work, but with good cause. She is considered unavailable for work effective September 7, 2008, and continuing until she reapplies for benefits and demonstrates she is available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css