

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANI M WEIS
Claimant

APPEAL NO. 12A-UI-03642-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBS STAFFING LLC
Employer

OC: 01/01/12
Claimant: Appellant (2)

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 April 4, 2012, reference 02, that concluded she failed to accept an offer of suitable work without good cause on January 12, 2012. A telephone hearing was held on April 24, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Brad Ortmeier participated in the hearing on behalf of the employer.

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 basis. The claimant worked for the employer as a certified nursing assistant (CNA) from August 8 to December 12, 2011. The work normally consists of a single shift working as a replacement for a regular worker.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 1, 2012. The claimant's average weekly wage based on the highest quarter of wages in the claimant's base period was \$194.53

The claimant was offered an eight-hour shift as a CNA at a rate of pay of \$12.75 on January 12 at Deerfield in Urbandale. She declined the eight-hour shift because she did not have enough gas to get to the job site.

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.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

In Appeal 12A-UI-03641-SWT, the claimant has been determined unavailable for work from January 1 through March 3, 2012, due to lack of reliable transportation. As stated in 871 IAC 24.24(4), "such claimant shall not be disqualified for refusal since the claimant is not available for work." In addition, the refusal of a one-day job paying \$102.00 would not be disqualifying, because it did not offer 100 percent of the claimant's average weekly wage based on her high quarter of wages of \$194.53.

DECISION:

The unemployment insurance decision dated April 4, 2012, reference 02, is reversed. The claimant is not subject to disqualification under the refusal of work disqualification. She remains

eligible for benefits from January 1 through March 3, 2012, based on
Appeal 12A-UI-03641-SWT.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css