

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERMINIA GUERRERO
Claimant

APPEAL NO. 11A-UI-15643-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

**OC: 04/17/11
Claimant: Respondent (1)**

Section 96.5(3)a – Refusal of Refusal

STATEMENT OF THE CASE:

The employer, Advance Services, filed an appeal from a decision dated December 2, 2011, reference 03. The decision allowed benefits to the claimant, Erminia Guerrero. After due notice was issued, a hearing was held by telephone conference call on January 12, 2012. The claimant participated on her own behalf. The employer participated by Unemployment Specialist Holly Carter.

ISSUE:

The issue is whether the claimant refused an offer of work.

FINDINGS OF FACT:

Erminia Guerrero filed a claim for unemployment benefits with an effective date of April 17, 2011. She filed an additional claim effective November 6, 2011, when her assignment ended November 7, 2011. Her average weekly wage during her base period is \$594.36.

On November 8, 2011, Office Manager Molly Timmon talked with Ms. Guerrero personally and offered her a temp-to-hire job at Palmer Candy on the second shift for \$9.50. The claimant declined.

REASONING AND CONCLUSIONS OF LAW:

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 claimant refused the job which was offered to her during the first week of her additional claim. That job would have paid \$380.00 per week which is less than 100 percent of her average weekly wages. Under the provisions of the above Code section this was not suitable work and the refusal is not a disqualifying event.

DECISION:

The representative's decision of December 2, 2011, reference 03, is affirmed. Erminia Guerrero is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css