

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARA L MCKENZIE**  
Claimant

**APPEAL NO. 11A-UI-10850-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CONSUMER DESIGNED SVC INC**  
Employer

**OC:06/05/11**  
**Claimant: Respondent (1)**

Section 96.5-3-A – Work Refusal

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated July 18, 2011, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 14, 2011. Claimant participated. Employer participated by Kelly Helm, Program Coordinator, and Rayna Danielson, Co-administrator. This case was heard in conjunction with 11A-UI-09653-VST.

**ISSUE:**

Whether the claimant refused to accept a suitable offer of employment at a time when she had an active claim for unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services to individuals with disabilities. The claimant began working for the employer on June 3, 2008. She was a part-time employee. She voluntarily resigned her position with the employer effective July 15, 2010. The claimant quit her other part-time job at a credit union at the same time. The claimant told the employer that she was looking for one full-time job and was working with temporary employment agencies to secure a full-time job that did not have weekend hours.

Beginning in the third quarter of 2010, the claimant reported wages with RJ Personnel, Inc, a temporary staffing agency, and beginning in the second quarter of 2011, the claimant was assigned to Trinity Logistics through Team Staffing. The assignment for Trinity Logistics was during the month of May 2011. The claimant earned \$9.00 an hour and worked 40 hours per week.

The claimant knew that her temporary assignment at Trinity Logistics might come to an end if the individual she was filling in for returned to work. The claimant went to this employer and inquired about a job. The employer offered the claimant a job on May 19, 2011. The job that was offered the claimant was as follows:

Every other Friday 3:00 p.m.-8:00 p.m. for 17 hours ( 9 hours at \$9.00 per hours, and 8 hours at \$8.00 per hour)

Every other Sunday 8:00 a.m.-8:00 p.m. for 12 hours (12 hours at \$9.00 per hour)

Every Wednesday 3:00 p.m.-9:00 p.m. (6 Hours for a total of 12 hours at \$9.00 per hour)

(Exhibit 1)

On June 2, 2011, the claimant told the employer that she was still working for the temp agency and that she was only interested in a Friday shift that began at 5:00 p.m. In addition, she could not start until a bar where she was also working closed.

The claimant did not establish a claim for unemployment insurance benefits until June 5, 2011.

On July 12, 2011, the employer contacted the claimant and asked if she was interested in working on Friday nights. The claimant said that she was not interested in weekend work. All employees are required to accept weekend shifts and the claimant is not eligible for employment with this employer.

The claimant is presently employed full-time on a temporary assignment through Team Staffing. She has not been paid unemployment insurance benefits nor made a claim for benefits since the week ending July 23, 2011. The claimant's average wage at the time she established her claim on June 5, 2011, was \$422.32.

## **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 evidence in this case established that the claimant did refuse an offer of work on July 12, 2011. The exact nature of that offer was not entirely clear. The claimant had been offered 41 hours back on May 19, 2011. She did refuse that job but her refusal did not disqualify her since she did not have an established claim for unemployment insurance benefits at that time.

The claimant and the employer had several discussions about the claimant returning to work. The claimant was unsure about her prospects of continuing a temporary assignment. She also had a part-time job at a bar and the future of that employment was also uncertain. The claimant was also hoping to work with temp agencies and find a full-time job that did not require work on the weekends. The claimant's return to work for this employer had dwindled to a shift every other Friday and this is the schedule that the claimant was asked about on July 12, 2011. The possibility of other hours was suggested but the claimant indicated she did not want to work weekends and the discussion ended.

The claimant's average wage at the time she established her claim on June 5, 2011, was \$422.23. The most concrete offer from the employer was for hours every other Friday from 5:00 p.m. to 8:00 a.m. for 15 hours at either \$9.00 an hour or \$8.00 an hour. The maximum weekly wage was \$120.00 based on these assumptions. The job, therefore, did not provide wages of at least 75 percent of the claimant's average weekly wage. The claimant did not refuse an offer of suitable work.

**DECISION:**

The decision of the representative dated July 18, 2011, reference 05, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is other eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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