

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROSALINA URQUIZA
2732 E 53RD ST #1
DAVENPORT IA 52807

BURKE CLEANERS INC
936 W 4TH ST
DAVENPORT IA 52802

Appeal Number: 05A-UI-11059-CT
OC: 08/07/05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

Rosalina Urquiza filed an appeal from a representative's decision dated October 17, 2005, reference 01, which denied benefits on a finding that she had refused an offer of suitable work with Burke Cleaners, Inc. (Burke). After due notice was issued, a hearing was held by telephone on November 14, 2005. Ms. Urquiza participated personally. The employer participated by Lisa Hendriks, District Manager, and Patricia Dilla, Customer Service Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: On or about August 25, 2005, Burke purchased

Quality Cleaners where Ms. Urquiza worked. She was told the new owners intended to maintain her employment in the same position, for the same number of hours each week, and at the same rate of pay. The only change would be that she would no longer be managing other individuals as she would be the only person working her shift.

Ms. Urquiza was working fewer hours at the time of the acquisition, in part because of her pregnancy. She wanted the employer to guarantee her that she would receive 40 hours of work each week after she returned from having her baby, which was due September 26. The employer was unable to make that guarantee. Ms. Urquiza never notified the employer as to whether she was accepting or declining the offer.

Ms. Urquiza filed a claim for job insurance benefits effective August 7, 2005. The offer of work was made to her during the week ending August 27, 2005. The average weekly wage paid to her during that quarter of her base period in which her wages were highest was \$670.89.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Urquiza should be disqualified from receiving job insurance because of her refusal of work with Burke. An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. In the case at hand, Ms. Urquiza was not being offered new work; she was being offered a continuation of her current employment with Quality Cleaners. Burke acquired the entire business known as Quality Cleaners. As such, Burke was a successor employer to Quality Cleaners. This means that they assumed the position of Quality Cleaners with respect to payroll, contributions, and accounts as if no change in ownership had occurred. See Iowa Code section 96.7(2)b. The administrative law judge concludes that, because there was going to be a continuation of Ms. Urquiza's employment by the successor employer, the wage criteria set forth in Iowa Code section 96.5(3)a are not applicable. Section 96.5(3)a would require that Ms. Urquiza be offered wages of at least \$670.89 in order for the work to be considered suitable. This is substantially more than she had been earning even when she worked as many as 55 hours in a given week. The administrative law judge does not believe the law was intended to force an employer to increase an individual's wages substantially in order to avoid liability for unemployment benefits when the employer is willing to continue the employment essentially unchanged.

Ms. Urquiza had been earning \$7.50 per hour and, therefore, the administrative law judge must presume she was willing to work for that wage. Although she was told the employer could not guarantee her 40 hours each week, she did not accept the employment to know what hours may have been available after she had her baby. The fact that the employer could make no guarantees does not mean that she would not have received full-time hours. Ms. Urquiza was not going to have an official title of manager. However, it does not appear that there would have been anyone to manage given the changes made by the new owners. Therefore, the loss of the title was not so substantial as to justify declining the work.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Urquiza did not have good cause for refusing the work offered by Burke. Accordingly, benefits are denied.

DECISION:

The representative's decision dated October 17, 2005, reference 01, is hereby affirmed. Ms. Urquiza refused an offer of suitable work with Burke for no good cause. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/s