

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S WILKINS

Claimant

APPEAL NO. 10A-UI-10539-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEASTERN COMMUNITY COLLEGE

Employer

OC: 05/30/10

Claimant: Respondent (1)

Iowa Code Section 96.5(3)(a) – Work Refusal

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 20, 2010, reference 02, decision that allowed benefits based on an Agency conclusion that the claimant had refused an offer of work on May 7, 2010 at a time when she did not have an active claim for benefits. After due notice was issued, a hearing was held on November 8, 2010. Claimant participated. Michelle Foster, Director of Human Resources, represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 10A-UI-10538-JTT. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and wages reported by the claimant.

ISSUES:

Whether the claimant is disqualified for benefits as a result of refusing an offer of suitable employment.

Whether the claimant's claim is subject to the between academic terms disqualification.

Whether the claimant had been able to work and available for work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Wilkins was employed as a part-time English as a Second Language (ESL) instructor at Southeastern Community College from June 2007 until May 31, 2010, when she voluntarily quit in response to changes in the conditions of her employment. Ms. Wilkins was a 60-70 percent of full-time employee. Due to budget constraints, including loss of grant funding, the employer decided to eliminate hours for ESL instructors during the month of June and to bring the ESL instructors back in July or August under reduced work hours. The elimination of work hours in June would eliminate Ms. Wilkins' eligibility for insurance and would require her to participate in a COBRA to continue her insurance coverage. The employer made this announcement on

May 7, 2010. In response to receiving the announcement, Ms. Wilkins verbally notified the employer that she would be resigning at the end of May to search for new employment and would not be returning to teach under the reduced hours in July or August.

Ms. Wilkins last performed work for the employer on or about May 23, 2010, but was paid through the end of May 2010 pursuant to her contract. On June 19, 2010, Ms. Wilkins submitted a letter to the employer for the sole purpose of obtaining payment of her accrued vacation hours. The employer required the letter before the employer would disburse the vacation pay. Ms. Wilkins had immediately began her search for new employment upon separating from the employer and made two or more employer contacts per week until she located new employment at the end of July 2010. After Ms. Wilkins started the new employment, she discontinued her claim for unemployment insurance benefits.

Ms. Wilkins established a claim for unemployment insurance benefits that was effective May 30, 2010. Ms. Wilkins received benefits for the period of May 30, 2010 through June 26, 2010. Ms. Wilkins reported substantial vacation pay for the week ending July 3, 2010 and did not receive unemployment insurance benefits for that week. Ms. Wilkins then received additional benefits for the period of July 4, 2010 through August 21, 2010. Ms. Wilkins received no benefits for subsequent weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses a suitable offer of employment without justification is disqualified for unemployment insurance benefits until the claimant has earned ten times her weekly benefit amount to insured employment. See Iowa Code section 96.5(3). Both the offer of employment in the refusal must occur at a time when the claimant has an active claim for unemployment insurance benefits. See 871 IAC 24.24(8).

The weight of the evidence in the record establishes that the employer's offer of continued employment under reduced work hours for July and August 2010 was made to the claimant was made to the claimant on May 7, 2010 and that the claimant rejected the offer on that same day. This was prior to the May 30, 2010 effective date of the claimant claim for unemployment insurance benefits. Accordingly, the work refusal would not disqualify the claimant for unemployment insurance benefits. In addition, the employer was offering fewer hours and benefits than the claimant had previously enjoyed and, for those reasons, employment was not suitable employment under the law. The claimant would remain eligible for unemployment insurance benefits, provided she is otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that the claimant was engaged in an active in earnest search for new employment and was both able to work and available for work from the time she filed her claim for benefits until the time she discontinued her claim for benefits after the week that ended August 21, 2010. Claimant was eligible for unemployment insurance benefits for the period of May 30, 2010 through the week ending August 21, 2010, provided she was otherwise eligible.

The final issue was whether the claimant's claim for unemployment insurance benefits is subject to the between academic terms disqualification provision in Iowa Code section 96.4(5). It is not. The weight of the evidence indicates that the continued employment the employer offered to the claimant was not the same as the employment she had enjoyed up to that point. Instead the employer was offering reduced work hours without insurance benefits that had been part of the prior employment.

DECISION:

The Agency representatives July 20, 2010, reference 02, decision is affirmed. The claimant's May 7, 2010, work refusal would not disqualify her for unemployment insurance benefits. The claimant was able and available for work for the time she established her claim for benefits through the benefit week ending August 21, 2010. Claimant's claim for unemployment insurance benefits is not subject to the between academic terms disqualification provision contained in

Iowa Code section 96.4(5). Effective May 30, 2010, the claimant was eligible for benefits, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css