

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKY L STARKEY
Claimant

APPEAL NO. 17A-UI- 00511 -B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAMES RATHE
Employer

**OC: 09/11/16
Claimant: Appellant (2)**

Iowa Code § 96.5-3-a – Work Refusal
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 9, 2017, reference 02, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on February 3, 2017. Claimant participated personally and had witnesses Melony Vogl and Sam Stokes. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant refused to accept a suitable offer of work?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer made an offer of work to the claimant on December 8, 2016. That offer included the following terms: Claimant was to be hired full-time as a non-union janitor after working twenty five years in union positions for employer. Claimant's average weekly wage is \$459.00. The offered wage was somewhere between \$10.00 and \$11.00 per hour. The offer was made in the 14th week of unemployment. Claimant refused the offer of work because claimant was unable to physically do the work requested and claimant would have to give up the seniority earned working for employer for twenty five years as a union employee.

At all times pertinent to this claim, claimant remained able and available to do those jobs she would previously performed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

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. 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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work. Claimant was offered a job which held much more difficult physical activities than her previous jobs. Additionally, claimant's job offer would have removed twenty five years of union seniority as she would have had to be a non-union employee. This is not seen to be a suitable offer of work as the Iowa Code allows for a finding of non-suitable work based on, "...any other factors the department finds bears a reasonable relation to the purposes of this paragraph." Iowa Code § 96.5(3)a. The administrative law judge finds that losing twenty five years of seniority to be a reasonable reason for claimant to refuse the job offer, especially when combined with the physical demands of the new job.

DECISION:

The decision of the representative dated January 9, 2017, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs