

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE L FALERIOS
Claimant

APPEAL NO. 07A-UI-11236-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 10/28/07 R: 04
Claimant: Appellant (1)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Leslie L. Falerios filed an appeal from a representative's decision dated November 28, 2007, reference 02, which held her ineligible to receive benefits by which she refused to accept suitable work on November 2, 2007. After due notice was issued, a hearing was held by telephone on December 19, 2007. The claimant participated personally. The employer participated by Lourie Martin, District Manager.

ISSUE:

The issue in this matter is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 23, through November 1, 2007 assigned to work at a client company as a customer service representative at the rate of \$9.00 per hour. Upon completing her most recent assignment, the next working day the claimant was offered a data entry position at a similar rate of pay and initially accepted the assignment. Subsequently, the claimant declined the assignment because it was second shift. On November 6, 2007, the claimant was contacted by the employer and again offered a customer service representative position at or near the same pay but did not report. Later the claimant agreed to accept another assignment through the company subsequently declined by directly contacting the client indicating that she was undergoing minor elective surgery. The claimant declined an additional position offered when she did not wish to invest approximately \$20.00 in required foot wear. The most recent position offered the claimant was declined by Ms. Falerios because she planned to be traveling out of town during the Christmas holiday season.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant has refused suitable work without good cause. It has. The evidence in the record

establishes that Ms. Falerios has not re-contacted Kelly Services for additional employment but has been contacted by Kelly Services on numerous occasions and repeatedly offered positions at or near the same rate of pay that she most recently accepted through the company. The evidence establishes that the positions offered to the claimant were similar in nature to positions that she had accepted in the past and that the claimant has repeatedly refused these positions for reasons that were primarily personal in nature such as out of state travel, preferred shifts, elective surgery and reasons of a similar nature. The evidence in the record establishes the positions offered during the first five weeks since she filed her claim for wages were equal to her average weekly wage paid during the highest quarter of her base period.

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.

For the reasons stated herein, the administrative law judge concludes the claimant has refused suitable work without good cause. Benefits are withheld.

DECISION:

The representative's decision dated November 28, 2007, reference 02, is hereby affirmed. The claimant refused to accept suitable work without good cause on November 2, 2007. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs