

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELBA M ALEJANDRO
Claimant

APPEAL NO. 12A-UI-14221-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNA ENTERPRISES
Employer

OC: 10/28/12
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 28, 2012, reference 01, that concluded the claimant was not subject to disqualification for not accepting an offer of work made on September 19, 2012. A telephone hearing was held on January 7, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. Bill Van Sloun participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant had filed a claim for unemployment insurance benefits effective October 30, 2011, which established a benefit year through October 28, 2012. The claimant's average weekly wage based on her highest quarter of earning in her base period was \$475.00. She stopped filing weekly claims on that claim in March 2012. She filed a claim for a second benefit year effective October 28, 2012.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment at United Brick and Tile in Adel, Iowa, from April 12, 2012, to September 10, 2012, when she finished the assignment. Her rate of pay was \$9.50 per hour. The job was about ten miles from her home.

On September 12, 2012, the employer offered the claimant a full-time job working on an assignment as a warehouse laborer in Johnston. The job was about 29 miles from the claimant's home. The claimant was told that the job paid \$8.00 per hour. She declined the job because of the wages offered and the amount of travel involved. The employer did not provide the claimant with the details about the job, in terms of the number of hours or the type of work involved.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's representative testified the job at Maurice's as \$9.50 per hour, but he was not the person who spoke to the claimant. The claimant testified credibly that she was told that the hourly rate of pay was \$8.00. I believe the claimant was told (perhaps incorrectly) that the job paid \$8.00 per hour.

Based on the formula of Iowa Code § 96.5-3-a, her prior wages rate, and the short time she had been unemployed when the offer was made, the claimant is not subject to disqualification for declining the work offered on September 12. The job was offered two days after she became unemployed and failed to offer her 100 percent of her high quarter average weekly rate.

DECISION:

The unemployment insurance decision dated November 28, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll