

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KOHL, PAMELA,**  
Claimant

**APPEAL NO. 10A-UI-15240-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 11/08/09**  
**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(3) – Refusal of Suitable Work.

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 25, 2010, reference 04, decision that allowed benefits based on an agency conclusion that the claimant refused an offer of work on August 19, 2010 for good cause. After due notice was issued, a hearing was held on December 13, 2010. Claimant participated personally and was represented by her significant other, William Eddy, who also testified. Attorney Dan Speir represented the employer and presented testimony through Tressa Graham.

**ISSUE:**

Whether the claimant refused an offer of suitable work on or about August 19, 2010 without good cause.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Pamela Kohl worked for Hy-Vee on a part-time basis from 2005 and last performed work for the employer on August 7, 2010. Ms. Kohl generally worked in the employer's Floral Department except when she would perform seasonal work in the employer's Garden Center. Ms. Kohl last performed work in the employer's Floral Department on April 4, 2010. When Ms. Kohl worked in the Floral Department, her hours varied from eight to 35 per week depending on the level of business. When Ms. Kohl worked in the Floral Department, 20 percent of her time was spent operating a cash register and the balance was spent cleaning, clipping flowers and performing other associated duties. When Ms. Kohl worked in the Floral Department, she generally worked afternoons, evenings, and weekends.

Ms. Kohl last performed work in the employer's Garden Center on August 7, 2010. At the peak of the Garden Center business, Ms. Kohl worked 30 hours per week. After the Garden Center closed for the season around the July 4 holiday, Ms. Kohl's hours in the Garden Center reduced to approximately six to 10 hours per week. At that point, Ms. Kohl was primarily attending to plants that had not yet sold.

In Spring 2010, as part of an annual review, the employer told Ms. Kohl that the employer wanted to move her into a regular cashiering position. When Ms. Kohl did her seasonal move from the Floral Department to the Garden Center on or about April 4, 2010, the employer moved one or more employees into the Floral Department to cover the hours Ms. Kohl would otherwise have worked. At the end of the Garden Center season, the employer was unwilling to allow Ms. Kohl to move back into her regular duties in the Floral Department.

When the employer no longer had work for Ms. Kohl in either the Garden Center or in the Floral Department, Ms. Kohl established an additional claim for unemployment insurance benefits that was effective August 8, 2010 and commenced receiving benefits. Ms. Kohl was still receiving benefits as of August 19, 2010.

On August 19, 2010, Tressa Graham, Human Resources Manager, telephoned Ms. Kohl. Ms. Graham reminded Ms. Kohl that the employer had brought up the idea of moving her into a regular cashiering position at the time of her annual review earlier in the year. Ms. Graham asked Ms. Kohl whether she would be interested in a cashiering position and told Ms. Kohl that the employer would provide her with appropriate training if she was interested in the position. Ms. Kohl's hourly pay would not change. Ms. Graham told Ms. Kohl that the cashiering hours might range from eight to 20 per week, but that there would be no guarantee of hours. This range of hours and lack of a guarantee of a specific number of hours was comparable to the arrangement Ms. Kohl had in the Floral Department. Ms. Graham did not address when Ms. Kohl would be scheduled to work, either the days of the week or the time of day, because Ms. Kohl had already been working at the times the employer might ask her to cashier.

Ms. Kohl rejected the offered position. Ms. Kohl's primary concern with the proposed cashiering position was that she did not think the cashiering position was a "proper use" of her mind. Ms. Kohl indicated she would rather work in a Heath Market, but the store where Ms. Kohl had worked did not include a Health Market. Ms. Kohl did not raise any health concerns.

#### **REASONING AND CONCLUSIONS OF LAW:**

When a claimant refuses an offer of suitable work without good cause at a time when the claimant is receiving unemployment insurance benefits, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. See Iowa Code section 96.5(3).

The evidence establishes a bona fide offer of employment on August 19, 2010, at a time when Ms. Kohl was receiving unemployment insurance benefits. The evidence also establishes a refusal of the offered work. The weight of the evidence indicates that the proposed cashiering position would have been within Ms. Kohl's capabilities.

A person who asserts a medical condition as the basis for refusing work is required to produce medical certification from a medical practitioner to support the assertion. See 871 IAC 24.24(6).

Ms. Kohl has not presented medical evidence, and the evidence fails to establish, any medical condition that would prevent Ms. Kohl from being physically able to perform the cashiering work.

871 IAC 24.24(14)(a) provides as follows:

Employment offer from former employer.

- a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the

usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)“b” are controlling in the determination of suitability of work.

Iowa Code section 96.5(3)(b) provides as follows:

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

The weight of the evidence in the record establishes that the cashier position offered and refused on August 19, 2010 was reasonably suitable to Ms. Kohl and comparable to the cashiering work Ms. Kohl had previously performed for the employer as part of her duties in the Floral Department. None of the factors referenced in Iowa Code section 96.5(3)(b) came into play to make the offered work unsuitable. Ms. Kohl's preference to work in a Health Market that did not exist, along with her opinion about “proper use” of her mind, would not make the work unsuitable or constitute good cause for refusing the offered employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Kohl refused an offer of suitable work on August 19, 2010 without good cause. Ms. Kohl is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount, provided she is otherwise eligible.

#### **DECISION:**

The Agency representative's October 25, 2010, reference 04, is reversed. The claimant refused an offer of suitable employment on August 19, 2010 without good cause. Effective the benefit week that ended August 21, 2010, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount, provided she is otherwise eligible.

This matter is remanded to the Claims Division for entry of an appropriate overpayment decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs