

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNITA J FLEMING
Claimant

APPEAL NO. 09A-UI-14910-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 02/22/09
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 13, 2009 (reference 04) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on November 3, 2009. Claimant participated. Employer participated through Colleen McGuinty. Department's Exhibit D-1 was received.

ISSUE:

The issue is whether claimant's appeal is timely, if she refused a suitable offer of work, and if so, whether she is overpaid benefits as a result.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last-known address of record on July 13, 2009. She did not receive the decision. The first notice of the decision was the overpayment decision dated September 24, 2009. She appealed the overpayment decision on time.

Employer made an offer of work to claimant by telephone on May 4, 2009. That offer included the following terms: Full-time temp to hire production assistant \$8.75 per hour (\$350.00 per week) at NIS, Inc. in North Liberty, Iowa. The claimant lives in Lisbon, Iowa and told employer she was not willing to accept assignments more than 25 miles from her home because she rides with her sister. Lisbon is 20.6 miles from North Liberty, Iowa. Claimant's average weekly wage is \$425.69. The offer was made in the 10th week of unemployment. Seventy-five percent of the AWW is \$320.00. She declined the job because she had accepted a housekeeping position elsewhere that later fell through. When that happened she did not contact the employer for additional work until September 2009 even though she had worked for them regularly during the base period.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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".

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472

(Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant refused a suitable offer of work on May 4, 2009. The administrative law judge concludes that she did not.

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. 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.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the

claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The offer was suitable as it met the wage requirements and fell within claimant's distance preference but since claimant had accepted another job she had a good cause reason for the refusal. However, when that job fell through she was required to resume her earnest and active search for work but she did not contact Sedona Staffing to notify it of her altered availability status knowing they had recently offered her employment. Since she did not explore a reasonable source of past employment claimant is not considered to have made herself available for work until September 1, 2009. Benefits are withheld effective May 4, 2009.

DECISION:

The July 13, 2009, reference 04, decision is modified without change in effect. Claimant's appeal is timely. She did not refuse a suitable offer of work but did not make herself available or apply for work with a past source of employment. Benefits are withheld from May 4 through September 1, 2009.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs