

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARY M SIMONS
PO BOX 283
COLESBURG IA 52035

LA LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265

Appeal Number: 06A-UI-00366-SWT
OC: 01/30/05 R: 04
Claimant: Appellant (3)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 9, 2006, reference 06, that concluded she was disqualified for refusing suitable work. A telephone hearing was held on January 11, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Nikki Kieffer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show that the claimant's last employer when she filed her new claim for unemployment insurance benefits was Tyco Electronics, and her average weekly wage during her highest quarter of earnings in her base period was \$377.54. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 27, 2005, after her employment at Tyco Electronics ended. Her average weekly wage during her highest quarter of earnings in her base period was \$377.54.

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant had worked for the employer from September 2005, to November 8, 2005. Her last assignment was working at Scale Models Company for 30 to 40 hours per week at a rate of pay of \$7.00 per hour. Her work hours were from 8:30 a.m. to 2:30 p.m. She completed that assignment. She filed an additional claim for benefits with an effective date of November 6, 2005.

On December 7, 2005, the claimant was offered a first-shift assignment at a business called On Point, from 3:00 p.m. to 11:00 p.m. The job was full time, involved light packaging work, and paid \$8.00 per hour (\$320.00 per week). The job was located in Peosta, Iowa, approximately 40 miles from the claimant's residence. The claimant had worked at On Point in September 2005. The job was to start on December 12, 2005, and was to last at least four weeks.

The claimant declined the job because she wanted to check out another full time permanent job in Manchester, Iowa, which would have been a shorter commuting distance. She had previously declined a first-shift job at On Point because she wanted to work the second shift so she did not have to get up so early.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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 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....

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 case law makes it clear that it does not matter what the reason for the refusal is, a claimant is not subject to disqualification if the work offered does not meet the wage requirements of the law. Biltmore Enterprises, Inc., v Iowa Department of Job Service, 334 N.W.2d 284 (Iowa 1983). Therefore, in this case, the claimant is not subject to disqualification since the job did not meet the requirement of providing the claimant with \$377.54 per week in wages.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The rules provide that an individual is unavailable for work if she is not willing to work during the hours in which suitable work for the claimant is available. In this case, the claimant first insisted on second shift work because she did not want to get up so early in the morning. Then when the claimant was offered the shift she wanted, she declined because she wanted to check out work in Manchester. The claimant's testimony that the employer insisted that she accept or decline the job immediately is not credible. Furthermore, since the job with the employer started on Monday, December 12 and the offer was made on December 7, the claimant had plenty of time to check out the job in Manchester before starting work on Monday. As a result, the claimant is ineligible for unemployment insurance benefits effective December 4, 2005, because the evidence establishes she was not available for work for a majority of the week, and continuing until she reapplies for benefits and demonstrates that she is again available for work.

DECISION:

The unemployment insurance decision dated January 9, 2006, reference 06, is modified in favor of the employer. The claimant is not disqualified for refusing suitable work, but she is ineligible to receive unemployment insurance benefits effective December 4, 2005, because she is not available for work. To remove the disqualification, she must reapply for benefits and establish that she has not unduly restricted her availability for work.

saw/kjw