

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA K KUEHL
Claimant

APPEAL NO. 09A-UI-10944-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHCREST INC
Employer

OC: 06/07/09
Claimant: Respondent (1-R)

Section 96.5-3-a – Refusal of Suitable Work
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 23, 2009, reference 04, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 14, 2009. The claimant participated personally. The employer participated by Michelle Garasky and Sherry Schendel-Henniger.

ISSUE:

The issue is whether the claimant refused an offer of suitable work that occurred within the claimant's benefit year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Rebecca Kuehl was employed by Northcrest, Inc., a care facility, from January 14, 2009 until June 5, 2009 when she left due to pregnancy. The claimant worked as a part-time certified nursing assistant working 24 hours per week and was paid by the hour. Ms. Kuehl opened her claim for unemployment benefits effective June 7, 2009.

On June 5, 2009, the claimant presented to her employer doctor restrictions that advised no lifting over 20 to 25 pounds and advised that the claimant should avoid pushing and pulling due to pregnancy. In an attempt to accommodate the claimant's restrictions, Northcrest considered the matter and offered Ms. Kuehl a combined position of certified nursing assistant and home health aide working at the same work location and essentially the same working hours. The employer carefully went through Ms. Kuehl's job responsibilities to determine that none would exceed the limitations imposed by Ms. Kuehl's physician. The employer proposed to have a second employee assist Ms. Kuehl in removing TED stockings from residents. Home health aides and CNAs are not required to lift residents. The employer proposed that Ms. Kuehl perform some of her duties in the independent living portion of the employer's facility. The employer proposed that the claimant work 5:00 p.m. until 10:00 p.m. Ms. Kuehl had previously

worked similar hours as a certified nursing assistant. The accommodated position offered to Ms. Kuehl on June 5, 2009 would have resulted in only four less working hours each week. The claimant refused the employer's offer to accommodate and left employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not refuse suitable work during a Benefit year.

Iowa Code section 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".

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.

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The evidence in this case establishes that Ms. Kuehl presented doctor's limitations to Northcrest, Inc. that instructed the claimant to avoid pushing, pulling or lifting over 20 to 25 pounds. In an effort to continue the claimant's employment, the nursing facility offered to accommodate the claimant by having her perform some duties as a residential assistant in the facility's independent living quarters in addition to some certified nursing assistant duties. The employer offered to have a second employee perform duties that required pulling or lifting. The claimant would not be required to lift residents or otherwise perform strenuous duties. The claimant had performed this type of work for this employer in the past. Although the record establishes the employer went to great lengths to accommodate the claimant's medical needs, Ms. Kuehl did not accept the accommodations.

The administrative law judge finds based upon the evidence in the record that the accommodations were reasonable and offered to the claimant on or about June 5, 2009. The offer did not occur during a period of time when the claimant had a claim for unemployment

benefits. The administrative law judge concludes that based upon the evidence in the record that although the claimant refused work that was suitable based upon the claimant's medical limitations, background, prior training and employment, because the offer did not occur within the claimant's benefit year, benefits are allowed. The issue of whether the claimant's leaving employment was disqualifying is remanded to UIS Division for determination.

DECISION:

The representative's decision dated July 23, 2009, reference 04, is affirmed. The claimant did not refuse an offer of suitable work within her benefit year. The issue of whether the claimant's leaving employment is disqualifying is remanded to UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs