

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARCY A OSTERKAMP**  
Claimant

**APPEAL NO. 11A-UI-12101-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANAMOSA COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 11/14/10**  
**Claimant: Respondent (5-R)**

Iowa Code § 96.5(3)a – Work Refusal  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 8, 2011 (reference 04) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 9, 2011. Claimant participated and was represented by Virginia McCalmont, Legal Assistant. Employer participated through Brian Ney and Steve Goodall.

**ISSUE:**

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed 25 to 30 hours-time as a health care aide and office worker and was separated from that job in May, 2011 because she had problems with tracking medication. She was told that she would be guaranteed another job in the fall and that she could stay as a clerical aide for the rest of the school year. She declined because her children were out of school and she did not want to arrange for child care. On August 17 Ney offered her one of two full-time (34 - 40 hours per week) library associate or student associate positions. She said she moved out of the district on August 15, 2011 and was unable to accept either one. All communication by both parties was verbal and direct without messaging.

She did not claim benefits between December 5, 2010 and the reopened November 14, 2010 claim on August 14, 2011 and has claimed benefits weekly benefits since then. The August 15, 2011 separation has not yet been determined at the claims level.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did refuse suitable offers of work but the reasons were because she was not available to work.

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(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or

health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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.

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 May 2011 offer was suitable and claimant did decline the offer of continued work in May because she was not available due to child care issues, but did not claim benefits during the summer so that issue is moot until her claim resumed August 14, 2011 when she had moved out of the area and declined work when she had reasonable assurance of continued employment from the previous academic year. Therefore, claimant is not disqualified from receiving benefits based upon the refusal, but is not eligible for the period through August 13, 2011.

Although she was available for work after she moved or was excused from being available because of her DAT status effective October 1, 2011, the August 15, 2011 separation is remanded to Claims for an initial fact-finding interview and determination.

#### **DECISION:**

The September 8, 2011 (reference 04) decision is modified without effect. Claimant did refuse a suitable offer of work but was unavailable for work from May through August 13, 2011. Since she did not claim benefits during that time there is no overpayment.

**REMAND:** The August 15, 2011 separation issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination, including whether or not there is an overpayment of benefits beginning August 14, 2011.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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