

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

RHONDA J JOHNSON
919 E 2ND ST
OTTUMWA IA 52501

OTTUMWA COMMUNITY
SCHOOL DISTRICT
ATTN HUMAN RESOURCES DEPARTMENT
422 MCCARROLL
OTTUMWA IA 52501

Appeal Number: 04A-UI-10697-RT
OC: 06-13-04 R: 03
Claimant: Respondent (1)

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 – Failure to Accept Work
Section 96.4-3 – Required Findings (Able And Available for Work)
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer or potential employer, Ottumwa Community School District, filed an inquiry letter, which was treated as a timely appeal of an unemployment insurance decision dated September 30, 2004 reference 03, allowing unemployment insurance benefits to the claimant, Rhonda J. Johnson. After due notice was issued, a telephone hearing was held on October 28, 2004, with the claimant participating. The potential employer, Ottumwa Community School District, did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. At

11:46 a.m. on October 7, 2004, the administrative law judge spoke to someone from the employer who was calling to inquire about this matter. The potential employer was confused because the claimant had never been employed by it. The administrative law judge explained the situation and the potential employer did not withdraw the appeal and left the judge with the impression that it would participate in the hearing. However, no one called in a telephone number where witnesses could be reached for the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant became unemployed on June 14, 2004. On September 16, 2004 she was offered a position with the potential employer, Ottumwa Community School District, paying \$10.79 per hour for a 4½ hour day for five days. This position would pay a gross weekly wage of \$242.77. The claimant's average weekly wage for unemployment insurance benefit purposes is \$481.88. This offer was made in the claimant's thirteenth week of unemployment and should pay 70 percent of the claimant's average weekly wage. The claimant did not accept the offer because it was part time and did not pay enough and, besides, the claimant's pay would be spread over an entire calendar year, although she would only be working for the school year. The claimant has placed no restrictions on her ability to work, except that she is looking for a position that does not require that she be on her feet for long periods of time. The claimant has placed no restrictions on her availability for work, other than that she is seeking full-time work. The claimant is actively and earnestly seeking work by making two in-person job contacts each week or sending out two résumés to potential employers, as approved by Iowa Workforce Development. Pursuant to her claim for unemployment insurance benefits filed effective June 13, 2004, the claimant has received unemployment insurance benefits in the amount of \$5,261.00 as follows: \$253.00 for benefit week ending July 3, 2004 (vacation pay \$60.00), and \$313.00 per week for 16 weeks from benefit week ending July 10, 2004 to benefit week ending October 23, 2004. For the first two weeks, benefit weeks ending June 19 and 26, 2004, the claimant reported vacation pay sufficient to cancel unemployment insurance benefits for those two weeks.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was, at relevant times, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits.
2. Whether the claimant is disqualified to receive unemployment insurance benefits because she refused to accept suitable work. The claimant is not disqualified to receive unemployment insurance benefits.
3. Whether the claimant is overpaid unemployment insurance benefits. The claimant is not overpaid unemployment insurance benefits.

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".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is and was, at relevant times, able, available, and earnestly and actively seeking work. The claimant credibly testified that she has placed no restrictions on her ability to work, other than she was looking for a position that did not require that she be on her feet for a long period of time. The subject position discussed below met those restrictions. The administrative law judge does not believe that this restriction unduly impedes or limits the claimant's opportunity for employment. The claimant also credibly testified that she has placed no restrictions on her availability for work, other than that she is looking for full-time work and, again, the administrative law judge does not believe that this impedes the claimant's opportunity to get employment. Finally, the claimant credibly testified that she is earnestly and actively seeking work by making two in-person job contacts each week, or sending out résumés, which process has been approved by Iowa Workforce Development. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

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.

The administrative law judge concludes that the employer, or potential employer, has the burden to prove that the claimant has refused to accept suitable work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant refused to accept suitable work. The employer did not participate in the hearing and provide evidence that it offered the claimant suitable work, which the claimant refused unjustifiably. The claimant credibly testified that on September 16, 2004, the potential employer herein, Ottumwa Community School District, offered her a position paying \$10.79 per hour for a 4½ hour workday five days a week, or a gross weekly wage of \$242.77. The claimant's average weekly wage is \$481.88. This offer was made in the claimant's thirteenth week of unemployment and should pay 70 percent of her average weekly wage, or \$337.31. The offered position did not. Accordingly, the administrative law judge concludes that the offered position was not suitable because its pay did not equal 70 percent of the claimant's average weekly wage. Further, the claimant refused the offer because it was part time and she had been full time and is seeking full-time work and, further, the pay would be spread over an entire calendar year, although the claimant would only be working for the school year. Accordingly, the administrative law judge concludes that the offer of work was not suitable and the claimant therefore did not refuse to accept suitable work. Therefore, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$5,261.00 since filing for such benefits effective June 13, 2004. The administrative law judge concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision dated September 30, 2004, reference 03, is affirmed. The claimant, Rhonda J. Johnson, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she did not refuse to accept suitable work and she is able, available, and earnestly and actively seeking work. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of her refusal to accept work from the potential employer herein, Ottumwa Community School District.

b/tjc