

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURIE K MYERS**

Claimant

**APPEAL NO. 09A-UI-03085-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAN J SCHUSTER DDS**

Employer

**OC: 04/27/08**

**Claimant: Respondent (2-R)**

Section 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The employer, Dan Schuster DDS (Schuster) filed an appeal from a decision dated February 20, 2009, reference 03. The decision allowed benefits to the claimant, Laurie Myers. After due notice, a hearing was held by telephone conference call on March 23, 2009. The claimant participated on her own behalf. The employer participated by Office Manager Mark Wittrock.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

Laurie Myers had previously been employed by Schuster as a temporary employee in the capacity of a receptionist. The employment ended and she filed for unemployment benefits effective April 27, 2008.

On January 28, 2009, she was contacted by Office Manager Mark Wittrock for a job as a sterilization technician. She had no prior training in this area but the employer did not expect her to have any, all training would be provided by the employer.

Ms. Myers declined the job, giving as the reason she was currently attending a college course and "it was not a good time to start something new." This course was Tuesday and Thursday from 10:00 a.m. until noon. However, she continued to apply for full-time positions in the hopes her class schedule would be accommodated by any new employer. Schuster was willing to accommodate her schedule but she did not try to work out the issue prior to her refusal.

Her real reasons for refusing the job had to do with her inability to get along with the previous office manager, Sam. However, this person was no longer the office manager. In addition, Ms. Myers and her husband planned to leave the area at some indefinite time in the future when he could obtain other employment. Ostensibly the leaving would be some time in August 2009, "one way or the other." She did not discuss with Mr. Wittrock whether an employment period of seven to eight months would be agreeable to him.

Laurie Myers has received unemployment benefits since filing a claim with an effective date of April 27, 2008.

### **REASONING AND CONCLUSIONS OF LAW:**

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 claimant refused the job, not because she was in college, but because she did not want to return to work for Schuster. However, her one main problem was the office manager, who was no longer an employee of the company. Therefore, any objection Ms. Myers would have to working with this person would be a non-issue since she was no longer there.

Her assertion she refused the job because of her class schedule is not the real reason, because she continued to apply for full-time jobs in the hopes her schedule would be accommodated. However, she did not discuss any such accommodation with Mr. Wittrock when the job was offered.

While it may eventually occur the claimant and her spouse will be leaving the area, that is an indefinite plan seven or eight months into the future, and many plans and circumstances can change in that time. It is possible the employer would have been willing to accept her on a short-time basis, but again this is something which was not discussed.

The record establishes the claimant refused the offer of work without any good cause. Under the provisions of the above Code section, she is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of February 20, 2009, reference 03, is reversed. Laurie Myers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount,

provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css