

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOUISE GALES

Claimant

APPEAL NO. 07A-UI-07203-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARLAND LLC

Employer

**OC: 06-03-07 R: 04
Claimant: Respondent (4)**

Section 96.5(3)a – Work Refusal
Section 96.4-3 – Able and Available for Work
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 18, 2007, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 8, 2007. The claimant participated in the hearing. Shae Munson, Senior Recruiter and Laura Gawronski, Employer Representative, participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the claimant refused a suitable offer of work, is able and available for work and whether she is overpaid benefits.

FINDINGS OF FACT:

The employer made an offer of work to the claimant on June 14, 2007. That offer included the following terms: A second shift (4:00 p.m. to 12:30 a.m.) industrial position at Strive earning \$7.75 per hour. The claimant's average weekly wage is \$101.00. The offer was made in the second week of unemployment. The claimant indicated on her application that she could work first shift because she depends on public transportation or friends for rides to and from work. She had worked second shift on occasion if she had a friend that was also working second shift. The claimant told the employer she could not accept the position because she was going out of town as her father was ill. She went to Mississippi and returned June 19, 2007, but her father passed away June 21, 2007, so she returned to Mississippi until June 28, 2007, and began looking for work July 2, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work and was not able and available for work from June 15 to July 2, 2006.

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.

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 offer was unsuitable as it was a second shift position and the claimant indicated she could work first shift on her application because of transportation issues. She was able to use public transportation or ask friends for rides if she worked first shift but not second shift. Consequently, the administrative law judge concludes the offer was unsuitable. The remaining issue is whether the claimant is able and available for work. The claimant was out of state the weeks ending June 23 and June 30, 2007, and was not able and available for work those weeks as required by Iowa law. Therefore, benefits are allowed with the exception of the weeks ending June 23 and June 30, 2007.

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.

Because the claimant was not able and available for two weeks, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The July 18, 2007, reference 03, decision is modified in favor of the appellant. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible with the exception of the two weeks ending June 23 and 30, 2007. The claimant is overpaid benefits in the amount of \$130.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css