

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH VILLALBA
Claimant

APPEAL NO. 10A-UI-12244-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNA ENTERPRISES
Employer

OC: 07/18/10
Claimant: Respondent (2-R)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 27, 2010, reference 02, that concluded the claimant was not subject to disqualification for refusing work. A telephone hearing was held on October 21, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Kate Druivenga participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant completed a full-time work assignment at CSC Company from May 16 to July 20, 2010.

When the client coordinator, Kate Druivenga, called the claimant on July 20, 2010, to let her know that she was no longer needed at CSC Company, Druivenga offered the claimant a job as a laborer at United Brick in Adel, Iowa. The job was full-time and was to last indefinitely. The rate of pay was \$9.50 per hour, which is comparable to the average rate of pay for similar work in the area. It was a dayshift job. The job involved picking up bricks with a lifting requirement of five pounds. Druivenga determined the claimant was capable of performing the job. The claimant declined the job because she thought it was too physically demanding. The claimant also declined a housekeeping job at Heartland Inn during the State Fair on August 5, 2010. The job paid \$8.00 per hour. The job was to last for two weeks with a possibility of it continuing.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 18, 2010. Her average weekly wage based on her high quarter earnings was \$342.70.

The claimant filed for and received a total of \$2,745.79 in regular unemployment insurance benefits for the weeks between July 18 and October 30, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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...

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.

The evidence establishes that the work offered on July 20, 2010, was suitable considering the factors found in Iowa Code § 96.5-3-a. The work offered on August 5, 2010, was not suitable because the wages were less than 100 percent of her average weekly wage.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 27, 2010, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw