

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

SHIELA JASPER

Claimant,

and

L A LEASING INC

Employer.

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HEARING NUMBER: 09B-UI-12053

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-3-a

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Shiela Jasper (Claimant) first began working with L.A. Leasing Inc. (Employer) performing clerical work on November 21, 2006. (Tran at p. 2-3). The Claimant's last assignment began on January 30, 2009 and ended on May 29, 2009. (Tran at p. 3). The Employer offered her a clerical assignment on June 22, 2009. (Tran at p. 3). The job involved performing data entry indexing and paid \$9.00 per hour. (Tran at p. 3). Before performing services at the assignment the Claimant would be required to take a typing test. (Tran at p. 4). The Claimant had taken this test before and knew that she could not pass it. (Tran at p. 5-7). She refused the job for that reason. (Tran at p. 5-7).

The offer of employment was made in the claimant's first five weeks since she filed her most recent or

additional claim. The wages offered equalled the claimant's average weekly wage paid during the highest quarter of her base period.

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REASONING AND CONCLUSIONS OF LAW:

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.

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871 IAC 24.24(2):

24.24(2) Job within claimant's capabilities.

a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

We are satisfied from the Claimant's long experience, and her prior turns at the test in question, that she is credible when she testified that trying to qualify for the job would be an exercise in futility. The refusal of suitable work disqualification is to "keep people honest" while on benefits. The Employment Security Law keeps workers on their feet while they look for work, and the law expects those workers to make diligent effort to get back to work as soon as reasonably possible. But it does not require them to make futile gestures in a mere show of getting back to work. Thus the Claimant is not expected to work at a job she knows she does not have the particular skill to do, that is, she is not required to take a job she *knows* she will lose in short order. "The law does not require what is vain and useless." 1 E. Coke, Commentarie upon Littleton §319 (1628)("Quod vanum et inutile est, lex non requirit."); Bouvier's law Dictionary, p. 2161 (8th. Ed. 1914). The Claimant has proven that the job offered was not within her capabilities, or that it required physical skill beyond that which she possessed. The job therefore was not suitable and she is not disqualified for refusing suitable work.

DECISION:

The administrative law judge's decision dated September 9, 2009 is **AFFIRMED** on the issue of being able and available and **REVERSED** on the disqualification for refusal of suitable work. The Employment Appeal Board concludes that the claimant did not refuse suitable work without good cause. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

RRA/ss

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DISSENTING OPINION OF MONIQUE KUESTER :

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

RRA/ss