

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA GALINDO

Claimant

APPEAL NO: 07A-UI-07515-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

**OC: 03/25/07 R: 02
Claimant: Appellant (5)**

Section 96.4-3 - Availability for Work
Section 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Linda Galindo (claimant) appealed an unemployment insurance decision dated August 2, 2007, reference 03, which held that she was not eligible for unemployment insurance benefits because she refused a suitable offer of work from Kelly Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2007. The claimant participated in the hearing. The employer participated through Kim Garrard, Staffing Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant refused a suitable offer of work and whether she is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer at the Kraft facility from December 4, 2005 through March 19, 2007 when she completed her assignment. The employer offered the claimant the same position at Kraft on June 19, 2007 but the claimant declined the offer because she was not available for medical reasons. The claimant completed her medical treatment at the end of July 2007 and the employer offered her another assignment on August 6, 2007. The claimant refused this job offer because she was going back to work with a former employer on August 16, 2007. She is currently working and not available for additional work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant should be disqualified for refusing a suitable offer of work? For the following reasons, the administrative law judge concludes she should not.

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.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to

be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The employer offered the claimant work on June 19, 2007 which she refused because of medical reasons. The employer offered the claimant another assignment on August 6, 2007 but she refused because she was not available. The offers may have been suitable, but the reason for the failure to accept the work was because the claimant was not available and this is a good cause reason for refusing work. Consequently, she is not disqualified from receiving benefits, but is not eligible for the period from June 19, 2007 to July 28, 2007. Benefits are withheld until such time as the claimant becomes available.

DECISION:

The unemployment insurance decision dated August 2, 2007, reference 03, is modified with no effect. The claimant had good cause for refusing work but is not eligible to receive unemployment insurance benefits from June 19, 2007 through July 28, 2007 because she does not meet the availability requirements of the law.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs