

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-12087-SWT
OC: 10/03/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 1, 2004, reference 01, that concluded was not subject to disqualification for failing to accept suitable work without good cause. A telephone hearing was held on December 6, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Richard Barry, attorney at law, participated in the hearing on behalf of the employer with a witness, Dick Montgomery.

FINDINGS OF FACT:

The claimant worked for the employer as an office worker and tax preparation trainee from October 15, 2003, to October 1, 2004. The claimant was hired to work full time (with some overtime hours) at a rate of pay of \$11.00 per hour doing tax preparation work during the tax

season from January through April and to work two days per week at a rate of pay of \$9.00 per hour for rest of the year.

The employer dropped its H & R block franchise, which meant that she could no longer do tax preparation work in Spencer, Iowa, because of a non-compete agreement she signed with H & R Block. The employer notified her about this on September 25, 2004, and offered to have her work in Spencer three days per week at a rate of pay of \$9.00 per hour during office work for a property rental business owned by the employer. She was also offered to work one to three weeks doing tax preparation work in Storm Lake, Iowa, at \$11.00 per hour. The employer would have required her to sign a non-compete agreement preventing her from doing tax preparation work within 35 miles from either Spencer or Storm Lake for two years.

On October 1, 2004, the claimant declined the offer of work because she believed it offered her substantially less pay and restricted her from using her tax preparation skills in the Spencer and Storm Lake area for two years.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 3, 2004. The claimant's average weekly wage based on the highest quarter of earnings in her base period was \$496.00.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for a claimant who fails to accept an offer of work without good cause. Iowa Code sections 96.5-3. The unemployment insurance rules, however, provide that before a disqualification can be imposed: "Both the offer of work . . . and accompanying refusal must occur during the individual's benefit year, as defined in subrule 24.1(4)." 871 IAC 24.24(8). "Benefit year" is defined as the one-year period of time beginning with the Sunday preceding the day that the claim was filed. 871 IAC 24.24(8).

The evidence is undisputed that the offer and acceptance occurred before the claimant's benefit year commenced. As a result, no disqualification is possible in this case. As a result, it is unnecessary to decided at this point whether the job was suitable or whether the claimant had good cause to decline the job.

DECISION:

The unemployment insurance decision dated November 1, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc