

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-01747-SWT
OC 11/02/03 R 01
Claimant: Appellant (4)

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 February 16, 2004, reference 02, that held the claimant ineligible for unemployment insurance benefits from November 2, 2003, through January 3, 2004. A telephone hearing was held on March 4, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Judy O'Grady participated in the hearing on behalf of the employer with a witness, Linda Swanson.

FINDINGS OF FACT:

The claimant worked full time for the employer from July 7, 1997, to September 19, 2003, as a machine operator when she was laid off due to lack of work. She was subject to recall for one year. Her last job paid the claimant \$15.88 per hour.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 2, 2003. Her average weekly wage during the highest quarter of earning in her base period was \$766.84.

The claimant was sent a letter by certified mail on December 22, 2003, recalling her back to work after unsuccessful attempts to contact her by phone on December 19. The human resources administrator had left messages on the claimant's answering machine, with her mother, and with the claimant's part-time employer. The letter ended up being returned undelivered after two attempts to deliver it on December 23 and 29, 2003. The claimant was not available to work from December 19 until she returned from vacation on January 6, 2004. When she returned from vacation the claimant discovered the employer was trying to contact her and called the employer.

The claimant was being offered an assembly job on the second shift that would have paid the claimant \$10.00 per hour for 40 hours of work per week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as defined by the unemployment insurance law in Iowa Code Section 96.4-3.

871 IAC 24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant was not available to work from December 19, 2003, until she returned from vacation on January 6, 2004. She was not available for the majority of the week ending December 27, 2003, and January 3, 2004, and is eligible for benefits for those weeks.

DECISION:

The unemployment insurance decision dated February 16, 2004, reference 02, is modified in favor of the claimant. The claimant is ineligible for benefits for the weeks between December 21, 2003, and January 3, 2004.

saw/s