

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

CANDICE R HILTON
300 PIRIE DR #4
HIAWATHA IA 52233

KELLY SERVICES INC
999 W BIG BEAVER RD
TROY MI 48084-4716

Appeal Number: 05A-UI-02162-CT
OC: 01/30/05 R: 03
Claimant: Respondent (3)

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 96.4(3) – Able and Available
Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

Kelly Services, Inc. (Kelly) filed an appeal from a representative's decision dated February 28, 2005, reference 03, which held that no disqualification would be imposed regarding Candice Hilton's February 19, 2005 refusal of work. After due notice was issued, a hearing was held by telephone on March 17, 2005. The employer participated by Debbie Dunbar, Senior Supervisor. Ms. Hilton did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: On January 28, 2005, Ms. Hilton completed an assignment through Kelly. On February 2, she was counseled regarding her unsatisfactory attendance during the assignment.

On February 9, Ms. Hilton was offered a full-time assignment that was to last up to one year. It also could have resulted in permanent employment with the client company. The assignment was for 40 hours each week at an hourly rate of \$10.50, \$1.25 more than she had earned on her prior assignment. Ms. Hilton initially accepted the assignment and was to start on February 22, 2005. As the start date approached, Kelly attempted to contact Ms. Hilton to have her come in to complete paperwork before the assignment started. She notified Kelly on February 17 that she was declining the assignment. She felt the employer should find someone more reliable for the assignment. She cited transportation issues and appointments for her children as factors, which rendered her unreliable.

Ms. Hilton filed a claim for job insurance benefits effective January 30, 2005. The average weekly wage paid to her during that quarter of her base period in which her wages were highest was \$621.59. She was paid \$307.00 in job insurance benefits for each of the four weeks ending March 19, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed as a result of Ms. Hilton's refusal of work. Before a disqualification may be imposed pursuant to Iowa Code section 96.5(3)a, the evidence must establish that the work refused constituted suitable work within the meaning of the law. The work was offered during the second week of Ms. Hilton's unemployment and was refused during the third week. Work offered during the first five weeks of unemployment must pay at least 100 percent of the average weekly wage paid during the highest quarter of earnings in the base period. In the case at hand, the work had to pay at least \$621.59 per week in order to be considered suitable. The administrative law judge appreciates that Ms. Hilton was being offered a higher hourly rate on February 9 than she had received at her prior assignment. An individual is not prohibited from accepting unsuitable work. However, there is no disqualification if unsuitable work is refused. Because the work offered did not pay at least \$621.19 per week, it was not suitable work and no disqualification is imposed.

Ms. Hilton's stated reason for declining the work offered on February 9 was that she did not feel she would be reliable in her attendance. She referred to transportation issues and appointments for her children. These factors raise the question of whether Ms. Hilton was available for work as required by Iowa Code section 96.4(3). If she could not accept the full-time work offered on February 9, it would seem unlikely that she would be able to accept full-time work with any employer. It is concluded, therefore, that Ms. Hilton did not satisfy the availability requirements of the law. Benefits are denied as of the Sunday of the week in which she was to start the assignment offered on February 9.

Ms. Hilton has received \$1,228.00 in job insurance benefits between February 20 and March 19, 2005. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 28, 2005, reference 03, is hereby modified. No disqualification is imposed for the refusal of work on February 17, 2005 as the work offered was not suitable work within the meaning of the law. Benefits are denied effective February 20, 2005 as Ms. Hilton was not available for work. Benefits are withheld until such time as she satisfies her local office that she is available for work. Ms. Hilton has been overpaid \$1,228.00 in job insurance benefits.

cfc/pjs