

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TABATHA R ARCHULETTA**  
Claimant

**APPEAL NO: 11A-UI-16149-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC/SEDONA STAFFING**  
Employer

**OC: 10/02/11**

**Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

L. A. Leasing, Inc. / Sedona Staffing (employer) appealed a representative's December 8, 2011 decision (reference 04) that concluded Tabatha R. Archuletta (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 11, 2012. The claimant participated in the hearing. Chad Baker appeared on the employer's behalf and presented testimony from one other witness, Kirsten Lester. 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.

**ISSUES:**

Is the claimant disqualified due to refusing an offer of suitable work without good cause? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant began taking assignments with the employer on September 1, 2010. Her final assignment began on March 7, 2011. She worked as a quality control inspector on a Monday through Friday, 7:00 a.m. to 3:30 p.m. schedule at the employer's Iowa City, Iowa business client. Her last day on the assignment was October 5, 2011.

On November 17 the employer inquired if the claimant would be interested in a data entry position with another Iowa City business client that would run from 3:00 p.m. to 11:00 p.m. The claimant responded that this would not work for her daycare situation, and further she had decided to return to school. Agency records indicate that the claimant was granted Department Approved Training (DAT) status effective October 16, 2011.

## REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work, and if so, whether that refusal disqualifies her from receiving unemployment insurance benefits.

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.

The hours offered on November 17 were substantially different from the hours the claimant had previously been working for the employer. At least given that only about five weeks had passed since the ending of the claimant's most recent work on a daytime shift, the evening position offered to her on November 17 was not "suitable." Her failure to make herself available for that assignment is not disqualifying.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4-3. However, another provision of Iowa Code section 96.4 provides (in pertinent part):

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

The claimant has been granted DAT status. While under that status, she is exempt from being available for work even on the same basis upon which she previously worked for the employer. However, during that period the employer's account is exempt from charge for benefits paid to the claimant.

**DECISION:**

The representative's December 8, 2011 decision (reference 04) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge while she remains on DAT status.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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