

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RENEE L DEWITT**  
Claimant

**APPEAL NO. 10A-UI-00074-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTROLUX HOME PRODUCTS INC**  
Employer

**OC: 11/22/09**  
**Claimant: Respondent (5)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-3-a – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated December 23, 2009, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 8, 2010. Claimant participated. Employer participated by April Ely, human resources generalist. The record consists of the testimony of Renee DeWitt and the testimony of April Ely.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer; and  
Whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures washers, dryers and laundry centers in its plant in Webster City, Iowa. The plant is scheduled to close in the first quarter of 2011. The claimant was hired as a full time production worker on April 7, 1999. She was laid off on August 20, 2009, due to lack of work.

On or about November 2, 2009, the claimant was recalled for work. No guarantee was given on the number of hours that the claimant would receive. It would vary, depending on the number of orders. The hours could be as few as 16 hours per week or three days per week. The claimant had applied to attend school through the Trade Act. When she first was notified about her recall, she accepted the recall because she did not know if she had been accepted for the Trade Act. On November 5, 2009, she found out that she was accepted for schooling through the Trade Act and would be starting college on December 2, 2009. She then told her employer that since she had been accepted for college and would be starting on December 2, 2009, she would not be coming back to work. She was terminated from the employer's system on November 5, 2009.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

**871---24.24 Failure to accept work and failure to apply for suitable work.** Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

**24.24(1) Bona fide offer of work.** a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and **a definite refusal was made by the individual.** For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact. b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

871 IAC 24.24 (emphasis added).

Where the claimant actually refuses work, as opposed to not applying for work, the refusal of suitable work question involves whether the work was "suitable" and, if so, whether the refusal was for "good cause". Suitability of an offer is a fact issue that must be resolved "in light of those facts peculiar to each given case." Norland v. IDJS, 412 N.W.2d 904, 912 (Iowa 1987). Suitability of an offer is a fact issue that must be resolved "in light of those facts peculiar to each given case." Norland v. IDJS, 412 N.W.2d 904, 912 (Iowa 1987). "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." Norland v. IDJS, 412 N.W.2d 904, 914 (Iowa 1987). "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." 871 IAC 24.24(4). Distance to the job site can also be good cause for refusing otherwise suitable work. 871 IAC 24.24(7) & (10).

In Pohlman v. Ertl Co., 374 N.W.2d 253 (Iowa 1985) the Supreme Court placed the burden of proof on good cause on the claimant. Subsequently in Norland v. Iowa

Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987) the Court ruled that the employer had the burden of proving suitability of the offer.

Based on the regulation on Iowa Code section 96.6(2) the Employer has the burden of proving that a definite work refusal has been made.

The evidence in this case established that the claimant was laid off due to lack of work on August 20, 2009. She was eligible for and received unemployment insurance benefits. The claimant also applied to attend school through the Trade Act, since the employer was closing the plant in the first quarter of 2011. When she was initially recalled to return to work on November 2, 2009, she accepted. However, she then learned that she had been accepted for the Trade Act and would be starting college on December 2, 2009. In addition, the recall to work was for less than full-time employment and might be as little as 16 hours per week.

Given these circumstances, the claimant had good reason for refusing the recall to work. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated December 23, 2009, reference 02, is modified without effect. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs