

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

RONA M VARNER
1517 FRANKLIN ST
KEOKUK IA 52632

ACCESS DIRECT TELEMARKETING INC
c/o TALX/JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106 0007

Appeal Number: 05A-UI-03767-DWT
OC: 02/13/05 R: 04
Claimant: Appellant (2)

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 – Refusal of Offer of Suitable Work

STATEMENT OF THE CASE:

Rona M. Varner (claimant) appealed a representative's April 4, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits because on March 11, she refused an offer of work from Access Direct Telemarketing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 2, 2005. Prior to the hearing, the employer informed the Appeals Section the employer had elected not to participate in the hearing. The claimant properly responded to the hearing notice.

The phone number the claimant provided on April 18, 2005 was called at 10:00 a.m. for the May 2 hearing. No one answered the phone. At 2:45 p.m. the claimant called the Appeals Section because she had not received any phone call for the 10:00 a.m. scheduled hearing. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen

the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Should the claimant be disqualified from receiving benefits when she refused the employer's offer of work on March 11, 2005?

FINDINGS OF FACT:

The claimant started working for the employer on November 4, 2002. The claimant was laid off from work on February 17, 2005. At the time the claimant was laid off, she earned \$10.50 per hour and had certain benefits.

The claimant established a claim for unemployment insurance benefits during the week of February 13, 2005. The claimant's average weekly wage during her base period was \$366.77 or \$9.17 per hour. On March 11, 2005, the employer asked the claimant to come back to work. The employer offered the claimant \$8.00 an hour because the employer would consider her a new hire in a part-time job. The claimant declined this offer of work.

Although no one answered the claimant's phone, the claimant was home at 10:00 a.m. The claimant was not expecting a call to participate in her unemployment insurance hearing in the morning because she thought the hearing was scheduled in the afternoon. When the claimant did not receive a call by 2:00 p.m. on May 2, she contacted the Appeals Section at 2:45 p.m. to find out why she had not been called for her hearing. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The evidence indicates that while the claimant planned to participate in the hearing, she was not available for the hearing at 10:00 a.m. because she thought the hearing was between 1:00 and 2:00 p.m. Even if the claimant believed her hearing was at 1:00 or 2:00 p.m., waiting until 2:45 p.m. to contact the Appeals Section is not reasonable. The facts suggest the claimant initially forgot about the hearing. While this is a legitimate excuse for not participating in a scheduled hearing, the claimant did not establish good cause to reopen the hearing and her request is denied.

If a claimant declined an offer of work without good cause, she is disqualified from receiving unemployment insurance benefits. The law also states the offer of work must be suitable. When an offer is made within the first five weeks of being unemployed, 100 percent of the claimant's average weekly wage must be offered. Iowa Code §96.5-3-a.

The record shows the employer made the offer to work within the first five weeks that the claimant had been laid off from work. The law says that to be a suitable job offer, the offered hourly wage had to be at least \$9.17 per hour. The employer only offered the claimant \$8.00 an hour. As a result, the employer's offer was not a suitable offer of work for the claimant on March 11, 2005. This means the claimant remains qualified to receive benefits as of March 11, 2005.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 4, 2005 decision (reference 01) is reversed. The employer's March 11, 2005 offer of work was not suitable for the claimant. Therefore, the claimant remains qualified to receive benefits as of March 11, 2005, provided she meets all other eligibility requirements.

dlw/kjf