

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LAURA A SCHMADEKE
Claimant

APPEAL NO. 15A-UI-11426-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRYSTAL DISTRIBUTION SERVICES INC
Employer

OC: 12/21/14
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work
Section 96.5-3-a – Offer of Suitable Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated October 7, 2015, reference 01, which denied unemployment insurance benefits finding that on September 10, 2015, the claimant refused an offer of suitable work finding that the gross weekly wage equaled at least 75 percent of the claimant's average weekly wage during the highest quarter of the base period. After due notice was provided, a telephone hearing was held on October 29, 2015. The claimant participated. Although notified, the employer did not participate.

ISSUE:

At issue in this matter is whether the claimant is able and available for work and whether the claimant has refused to accept an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Laura Schmadeke opened a claim for unemployment insurance benefits with an effective date of December 21, 2014 and was provided the brochure that explains the unemployment compensation system and its requirements. Ms. Schmadeke, at that time, was working as a capitol project coordinator for the Volt Company at an annual salary of \$60,000 per year. Ms. Schmadeke's employment with the Volt Company came to an end on July 2, 2015, and the claimant filed an additional unemployment claim.

During early September 2015, Ms. Schmadeke made application for employment with Crystal Distribution Services Inc. during the week of September 6, 2015. The claimant was called for a second interview with that company and the duties and responsibilities of the job position that was open were explained to the claimant. The employer emphasized the mandatory overtime requirement of the job position indicating that overtime would be mandatory and required whether it occurred during the week, on weekends or on holidays. Although the employer did not indicate the exact number of overtime hours that would be required, the claimant understood

from the description of overtime that it would be required often and the claimant was repeatedly asked if the mandatory overtime would be a problem for her. Ms. Schmadeke indicated that the overtime would not be a problem believing that the position being offered was an hourly position where overtime would be paid.

On September 10, 2015, Ms. Schmadeke was contacted by Crystal Distribution Services Inc. and offered the job position, however at that time the employer informed Ms. Schmadeke that they had reconsidered and were now offering the position as a "salary-exempt" position wherein the claimant would not be compensated additionally for any mandatory overtime hours that were required. Because the mandatory overtime without additional compensation would have taken the pay being offered by the company below 75 percent of her average weekly wage during the highest quarter of her base period, and Ms. Schmadeke had other active job prospects, she declined the offer.

Ms. Schmadeke is actively and earnestly seeking work each day by contacting prospective employers. The claimant has expanded her job search and lowered the restrictions on the type of employment she would accept as time has progressed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code section 96.5(3)b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

The evidence in the record establishes that Ms. Schmadeke is able and available for work. The claimant is actively and earnestly seeking new employment with perspective employers each week she claims unemployment insurance benefits and is able to report job contacts to Iowa Workforce Development.

The second question is whether the evidence in the record establishes that the claimant refused an offer of suitable work with good cause. It does.

The evidence in the record establishes that Ms. Schmadeke made application for employment with Crystal Distribution Services Inc. and was willing to accept employment with that company although the offer required substantial mandatory overtime, based upon her belief that any overtime work would be compensated by her new employer. When the employer changed the job offer on September 10, 2015, making the offer of work a salary-exempted position wherein the claimant would not receive any additional compensation for the substantial overtime that the employer had emphasized, Ms. Schmadeke declined the offer.

The administrative law judge concludes, based upon the evidence in the record that the modified job offer made to Ms. Schmadeke on September 10, 2015 did not meet the minimum wage requirements as set out for an offer to be considered suitable.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant is able and available for work and that the claimant has not refused an offer of suitable work. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 7, 2015, reference 01, is reversed. The claimant is able and available for work, has not refused an offer of suitable work and is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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