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

SHIRLEY T WHITELOCK
2135 MORNINGVIEW RD
DUBUQUE IA 52001

L A LEASING INC
SEDONA STAFFING
612 VALLEY DRIVE
MOLINE IL 61265

Appeal Number: 04A-UI-01760-DT
OC: 12/14/03 R: 04
Claimant: Respondent (5)

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 – Work Refusal
871 IAC 24.26(19) – Temporary Employment

STATEMENT OF THE CASE:

L A Leasing, Inc., doing business as Sedona Staffing (employer) appealed a representative's February 5, 2004 decision (reference 07) that concluded Shirley T. Whitelock (claimant) was qualified to receive unemployment insurance benefits in connection with her employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2004. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf. 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:

Was there a disqualifying separation from employment? Did the claimant refuse a suitable offer of work without good cause?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer in March 2002. The assignment at issue for this hearing was a one-day assignment on December 31, 2003. The assignment was as a full-time warehouse worker at the employer's business client, the same client at which all but one of the claimant's assignments had been. The assignment ended that date because the business client deemed the assignment to be completed. The employer was aware that it would only be a one-day assignment, and the claimant did subsequently regularly contact the employer to indicate her availability and seek reassignment.

The claimant had always indicated that she was only available to work four weekdays and no weekends. The weekday she was not available had varied, but since at least August 2003 had been Wednesday, the day she cared for her ailing mother-in-law.

On January 21, 2004, the employer contacted the claimant and offered her a position at another business client that would have been full time, Monday through Friday, with some possible Saturday work. The claimant declined because of the Wednesday and potential Saturday requirement. On January 22 the employer again contacted the claimant and offered her a position at a third business client that also would have been full time, Monday through Friday, 3:00 p.m. to 10:00 p.m. The claimant again declined due to the Wednesday and the evening hours. The claimant has subsequently been given an additional assignment at the original business client.

REASONING AND CONCLUSIONS OF LAW:

The initial question in this case is essentially whether there was a disqualifying separation from employment.

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.

871 IAC 24.26(19) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of

> Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The employer was aware that the business client had ended the assignment and considered the claimant's assignment to have been completed. Where a temporary employment assignment has ended and the employer is aware of the end of that assignment, regardless of whether the claimant reported for a new assignment, it is deemed to be a separation other than voluntary leaving, and benefits are allowed.

The next issue in this case is whether the claimant refused a suitable offer of work.

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.

871 IAC 24.24(15) provides in pertinent part:

In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:
d. Length of unemployment.
k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

Particularly noting that only a few weeks had passed after the ending of employment that had met the claimant's availability restrictions, the claimant is not required to make herself available five days per week; she has demonstrated that she is able to find work that fits her availability. She had good cause for refusing the positions offered by the employer on January 21 and January 22.

DECISION:

The representative's February 5, 2004 decision (reference 07) is modified with no effect on the parties. The claimant's December 31, 2003 separation was not a voluntary quit but was the completion of a temporary assignment. She did not refuse offers of suitable work without good cause on January 21 and January 22, 2004. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/b