

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J MACHAEL
Claimant

APPEAL NO. 11A-UI-14925-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LA LEASING INC
SEDONA STAFFING**
Employer

**OC: 07/17/11
Claimant: Respondent (2/R)**

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Sedona Staffing (employer) appealed a representative's November 8, 2011 decision (reference 01) that concluded Amanda Machael (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 12, 2011. The claimant participated personally. The employer participated by Colleen McGuinty, unemployment benefits administrator, and Shelby Kingery, account manager.

ISSUE:

The issue is whether the claimant refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits with an effective date of July 17, 2011. Her average weekly wage was \$371.62. On October 17, 2011, during the thirteenth week of unemployment, the employer offered the claimant a full-time job earning \$350.00 per week working from 5:30 a.m. to 2:00 p.m. The claimant previously told the employer she could work any shift. The claimant refused the offer of work because she did not have child care or transportation to a daytime job. The claimant did not look for child care during the day. Her husband took their only car to work during the day. The claimant told the employer she would only accept second shift work. During the thirteenth week of unemployment, suitable work should have paid \$260.32 or more in the claimant's situation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. For the following reasons, the administrative law judge concludes the claimant is not able and available for work. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

The claimant's car was being used by her husband during the day. When a claimant's has no means of transportation to employment, the claimant is deemed to not be available for work. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with another employer.

871 IAC 24.23(8) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

When an employee is spending working hours caring for children, she is considered to be unavailable for work. The claimant was devoting her time and efforts to caring for children. She is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits, due to her unavailability for 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.

The work was offered within thirteen weeks of the claimant's unemployment and was required to provide the claimant wages 70 percent of those paid to the claimant during the highest quarter of her base period. The evidence establishes that the claimant would have received at least seventy percent of her average weekly wages during her highest quarter of earnings. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was suitable work. The claimant is disqualified from receiving unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the

department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's November 8, 2011 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits for being unavailable for work. Benefits are denied. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw