

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA K SIEMENS**

Claimant

**APPEAL NO. 06A-UI-11314-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SARTORI MEMORIAL HOSPITAL**

Employer

**OC: 10-01-06 R: 03  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

Iowa Code § 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 17, 2006, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on December 12, 2006. The claimant did participate. The employer did participate through Missy Santman, Director of Human Resources.

**ISSUE:**

Did the claimant refuse a suitable offer of work? Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was off work due to a worker's compensation injury for a period of time. When the claimant was cleared by her physician to return to work, the employer made a number of different job offers to her. Prior to her work-related injury, the claimant worked full-time for the hospital.

The employer made an offer of work to claimant on October 10, 2006. That offer included the following terms: working in her original position as a housekeeper with modifications to accommodate all of her permanent work restrictions, including her restrictions against pushing/pulling and repetitive hand motions. The employer was not going to require the claimant to make beds and they had purchased a lighter weight cart for her to use. The claimant refused the job because she did not think it would comply with her work restrictions and because she no longer wanted to work as a housekeeper. The job was the same shift she had been working and for the same rate of pay but would have been physically located 13 miles from her previous job at Covenant Hospital not Sartori Hospital where the claimant had previously worked. The claimant refused the job. She also refused all other housekeeping jobs offered to her because they were dead end jobs and the claimant wanted a position where she could improve herself. Prior to her injury, the claimant had only worked as a housekeeper.

On November 9, the claimant was again offered another housekeeping position which she refused since she did not want to return to the housekeeping department, even if the jobs did comply with her work restrictions.

The claimant began nursing school on November 20, 2006. She attends school from 7:00 a.m. until 2:00 p.m. on Monday, Tuesday, Thursday and Fridays. The claimant has not accepted any other employment because she is attending school full-time. The claimant is in school 28 hours per week.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did decline an offer of work because she was not available.

Iowa Code § 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(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. 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. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code § 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 section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 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 section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, claimant is not disqualified from receiving benefits, but is not eligible for the period from October 10, 2006 when she refused to return to any housekeeping job to date of hearing as she remains a full-time student. Benefits are withheld until such time as claimant makes herself available for work.

**DECISION:**

The November 17, 2006, reference 03, decision is affirmed. Claimant did decline a suitable offer of work but was unavailable at the time. Benefits are withheld effective October 10, 2006 until such time as the claimant makes herself available for work.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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