

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY SCHULZ

Claimant

APPEAL NO: 15A-UI-04086-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARNES & NOBLE BOOKSELLERS INC

Employer

OC: 02/01/15

Claimant: Appellant (2)

Section 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 31, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 5, 2015. The claimant participated in the hearing. The employer faxed a statement prior to the hearing indicating it would not be participating in the hearing.

The issue in this hearing is whether the claimant refused a suitable offer of work. That issue was not included on the hearing notice. The claimant waived notice on that issue. The employer is not required to receive notice on a work refusal issue.

ISSUE:

The issue is whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The claimant applied for a position as a part-time book seller at Barnes & Noble and was called for an interview to be held February 12, 2015. During the interview the employer indicated it wanted the claimant to work as a barista. The claimant explained she needed to earn at least \$10.00 per hour and the employer stated it did not usually pay that much because of the claimant's experience in retail it would consider her salary requirements. On February 18 or 19, 2015, Barnes & Noble called the claimant and offered her the job. The person who made the offer was not the same person who interviewed the claimant and consequently asked the claimant if wages were discussed during the interview. The claimant indicated she needed to earn \$10.00 per hour and the potential employer said it was offering the claimant \$7.35 per hour. The claimant stated she could not accept the position for that wage and the potential employer countered with \$8.00. When the claimant said that was still not enough the negotiations ended and the claimant declined the offer of work.

The claimant's average weekly wage is \$590.58. The offer was made in the claimant's third week of unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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.

The offer of work made by the potential employer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. The offer was made in the claimant's third week of unemployment and consequently was required to meet 100 percent of her average weekly wage. The wages offered by the potential employer were considerably below that amount. Consequently, benefits are allowed.

DECISION:

The March 31, 2015, reference 01, decision is reversed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs