

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN TELLERY
Claimant

APPEAL NO: 13A-UI-02059-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 01/06/13
Claimant: Respondent (2R)

Section 96.5(3)a – Work Refusal
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 11, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 19, 2013. The claimant participated in the hearing. Maria Mays, Risk Administrative Assistant and Elizabeth Gunnell, Account Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

The claimant called the employer January 14 through 16, 2013, to state she was available for work on any shift in the Quad Cities area. The employer made an offer of work to the claimant January 16, 2013. That offer included the following terms: A full-time packer/packager on the first or second shift at Hill and Valley in Rock Island for \$8.95 per hour. The claimant's average weekly wage is \$324.43. The offer was made in the claimant's fifth week of unemployment. The claimant originally accepted the offer of work January 16, 2013, and agreed to go in to pick up the map, watch the video and get the client handbook January 17, 2013, but called on that date to say she could not accept the assignment because she did not have a driver's license.

The claimant has claimed and received unemployment insurance benefits since her refusal of work with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did refuse 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.

The employer made a suitable offer of work to the claimant January 16, 2013, and the claimant refused the offer because the job was in Rock Island and she did not have a driver's license. The claimant called in stating she was available for any shift in the Quad Cities area January 14 through January 16, 2013, but then refused the offer, due to the location, January 17, 2013. She had not previously limited her availability. The offer was suitable as it met the wage, hour and location requirements the claimant called in as available and the claimant did not have a good-cause reason for the refusal. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be

recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The February 11, 2013, reference 01, decision is reversed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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