

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANN TISHER

Claimant

APPEAL NO. 10A-UI-15328-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 08/08/10

Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 2, 2010, reference 02, that concluded she failed to accept an offer of suitable work without good cause. A telephone hearing was held on December 20, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Holly Carter participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant filed a claim for unemployment insurance benefits effective August 8, 2010, after her full-time employment with Adidas-Sports Licensing Division ended. When her employment ended, her hourly wage was \$10.67 per hour. The claimant's average weekly wage based on her high quarter of earnings was \$591.99. The employer is not a base period employer on the claim.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment at CRST Transportation as a recruitment screener from August 24 to September 30, 2010, at a rate of pay of \$10.00 per hour for full-time work. She reopened her claim for benefits effective October 3, 2010.

On October 5, 2010, the claimant was offered three jobs. First, a general laborer job at J and A Printing at a rate of pay of \$8.50 for full-time work. Second, an order puller job for Lil' Drug Store at a rate of pay of \$7.50 for full time work. Third, a tele-fundraiser position with the Muscular Dystrophy Association (MDA) at a rate of pay of \$10.00 per hour.

The claimant declined the J and A Printing and Lil' Drug Store due to the pay offered and because she was looking for office work. She declined the MDA job because she did not feel comfortable making outbound calls to solicit money and felt the representative who offered her

the job was not upfront about what the job entailed and the rate of pay, which was originally quoted as \$11.00 per hour.

On October 12, 2010, the claimant was offered a file clerk job at Kenwood Record Management at a rate of pay of \$10.00 per hour for full time work. The claimant declined the job because she had lost trust in the employer's representative after the MDA job was offered to her.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The claimant is not subject to disqualification for declining any of the jobs offered because none of the jobs offered 100 percent of the claimant's average weekly wage of \$591.99, and the work was offered within five weeks of when the claimant filed her additional claim. The case law makes it clear that it does not matter what the reason for the refusal is, a claimant is not subject to disqualification if the work offered does not meet the wage requirements of the law. *Biltmore Enterprises, Inc., v Iowa Department of Job Service*, 334 N.W.2d 284 (Iowa 1983).

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a

future benefit year, its account may be chargeable for benefits paid to the claimant based on her separation from employment.

DECISION:

The unemployment insurance decision dated November 2, 2010, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css