

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALLORY A NIELAND
Claimant

APPEAL NO. 11A-UI-13887-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SOUTHERN CAL
COMMUNITY SCHOOL DISTRICT**
Employer

**OC: 08/
Claimant: Respondent (1)**

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 21, 2011, reference 04, that concluded the claimant was not subject to disqualification for failing to accept an offer of work. A telephone hearing was held on November 17, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jeff Kruse participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time as an elementary school teacher for the employer from August 2010 to June 2011, when the school year ended. She worked at the grade school in Lohrville, Iowa.

In August 2011, the claimant was informed that she would not be employed during the 2011-2012 school year.

On September 20, the board secretary contacted the claimant about an opening working for an elementary school teacher in Lohrville. The job would have involved the same terms and condition as her previous position.

The board secretary provided the same information about the opening to a few other laid-off teachers, and if any of them would have been interested in the job, the employer would have had to gone through an interview process before hiring one of them.

The claimant declined the offer of work on September 20 because she had just moved to Minnesota.

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 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....

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 [100 percentage] 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 ... if the work is offered during the first five weeks of unemployment.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The evidence establishes that the claimant had good cause to decline the offer of work, because she did not reside in the area where the work was offered at the time the offer was made.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. There is no evidence that the claimant was not able to work and available for work during the time she filed for benefits.

The claimant remains disqualified based on her separation from her most recent employer.

DECISION:

The unemployment insurance decision dated October 21, 2011, reference 04, is affirmed. The claimant is not subject to disqualification for failing to accept an offer of work from the employer.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw