

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY A GARTLAND**  
Claimant

**APPEAL NO. 07A-UI-03546-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LA LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 11/05/06 R: 03  
Claimant: Respondent (2)**

Section 96.5(3)a – Refusal of Work  
Section 96.4(3) – Able and Available  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Sedona Staffing, filed an appeal from a decision dated March 29, 2007, reference 02. The decision allowed benefits to the claimant, Ashley Gartland. After due notice was issued a hearing was held by telephone conference call on April 23, 2007. The claimant participated on her own behalf. The employer participated by Unemployment Benefits Administrator Colleen McGuinty and Account Manager Kathy Hutchinson. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant refused an offer of work and whether she is able and available for work.

**FINDINGS OF FACT:**

Ashley Gartland was employed by Sedona Staffing from May 5, 2005 until November 3, 2006, as a temporary employee on the second shift at Applied Technical Products (ATP). At the time she was hired the claimant told Sedona Staffing she was available for first and second shifts. She was laid off on November 3, 2006, and notified Account Manager Kathy Hutchinson of the end of the assignment. Ms. Gartland believed she was not going to be called back to ATP until "next year" and ended her childcare arrangements with her current provider.

On November 8, 2006, Ms. Hutchinson contacted her by phone and said ATP needed her to begin work that afternoon for another period of employment. She was not able to do so because she lacked childcare but said she would try to come in the next day. On November 9, 2006, the claimant contacted ATP and said she had not found childcare and would not be in. At no time did she notify Sedona Staffing to say she would not be able to accept the assignment after all, nor to change her work availability hours.

Ms. Gartland's entire base period wages were earned in second shift employment but since filing her claim for benefits she had only been available to work first shift. In addition, she is not certain she would have child care available should she be offered a job on first shift because it would depend on the exact hours she was to work and the wages paid before she would know if any of her likely candidates for child care would be available at those times and whether she would earn enough money to pay for child care.

Ashley Gartland has received unemployment benefits since filing a claim with an effective date of November 5, 2006.

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

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.

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 childcare 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 section 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".

Under the provisions of the above Administrative Code section, it must first be determined whether the claimant was able and available for work before a disqualification may be imposed for a refusal of work. In the present case the claimant cannot be considered to be able and available for work. Her entire base period wages were earned in second shift work and she is no longer available for anything but first shift work. In addition, she is not certain she would be available to accept even first shift work because the availability of day care depends on the hours she would have to work and whether her wage would be enough to cover the costs. Under the provisions of 871 IAC 24.23(8), lack of childcare renders a person not able and available for work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation

trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of March 29, 2007, reference 02, is reversed. Ashley Gartland is not able and available for work and is ineligible to receive unemployment benefits. She is overpaid in the amount of \$3,504.57.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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