

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TRACY L MURRAY
11325 – 140TH ST TRLR 47
DAVENPORT IA 52804-9559**

**DAVENPORT COMMUNITY SCHOOL DIST
ATTN SUSAN K HERZMANN
1606 BRADY ST
DAVENPORT IA 52803**

**Appeal Number: 06A-UI-06064-JTT
OC: 04/30/06 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(3)(a) – Refusal to Accept Suitable Employment

STATEMENT OF THE CASE:

Davenport Community School District filed a timely appeal from the June 8, 2006, reference 03, decision that allowed benefits and concluded that the claimant did not refuse a suitable offer of employment. A hearing on Appeal Number 06A-UI-05481-JTT, concerning a related separation from employment, was scheduled for June 13, 2006 and the parties properly notified. The Refusal of Suitable Employment issue was listed as a potential issue in 06A-UI-05481-JTT. The employer filed its appeal in the present matter on June 12. The parties waived formal notice on the present matter and a consolidated hearing occurred on June 13. Claimant Tracy Murray participated. Associate Director of Human Resources Jill Cirivello represented the employer. The administrative law judge took official notice of the Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracy Murray was employed by the Davenport Community School District as a full-time para-educator from August 21, 2000 until March 22, 2006, when she quit in response to changes in the conditions of her employment. Until March 22, 2006, Ms. Murray had been assigned to work at Wilson Elementary School. Ms. Murray had missed a significant amount of work due to illness and a pending divorce. Ms. Murray's evaluation, conducted in May 2005, indicates positive reviews for everything except attendance.

In February or March 2006, Wilson Elementary School principal Sheri Schultz told Ms. Murray that if she missed any more work, she would be required to provide a doctor's note or proof that she had needed to attend court. One week prior to her separation from the employer, Ms. Murray notified the employer that her children were ill and that she would need to be absent from work. Ms. Murray provided a doctor's note to the employer. On or about March 20, Principal Schultz notified Ms. Murray that she was discharged from her position/assignment at Wilson Elementary School.

On March 22, 2006, Associate Director of Human Resources Jill Cirivello notified Ms. Murray that due to Ms. Murray's attendance at Wilson Elementary, the employer had decided to "transfer" Ms. Murray to a "floater" position and the district would thereafter assign Ms. Murray to substitute at schools that needed coverage or additional assistance. Ms. Cirivello further notified Ms. Murray that if Ms. Murray accepted "an assignment," that the district would continue to pay Ms. Murray at her current hourly rate "for all hours worked for the rest of the school year" and allow her to seek other para-educator assignments in the district. On March 21, the employer instructed Ms. Murray to report to Lincoln Elementary School to cover for a para-educator who was on leave. There was no guarantee that the assignment would last to the end of the school year and no plans for a further assignment to complete the school year.

On March 22, Ms. Murray declined to report to Lincoln Elementary School. Ms. Cirivello notified Ms. Murray that the employer deemed her refusal to accept the temporary assignment to the Lincoln School a voluntary resignation from the "floater" position.

Ms. Murray established a claim for benefits that was effective on April 30, 2006, and has received benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Murray refused a suitable offer of employment since establishing her claim for benefits. It does not.

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the

refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The evidence in the record indicates that the employment offer and refusal occurred in March, but that Ms. Murray did not establish her claim for benefits until April 30. Because the offer and refusal predated the claim, the refusal would not disqualify Ms. Murray for unemployment insurance benefits. See 871 IAC 24.24(8). Ms. Murray is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated June 8, 2006, reference 03, is affirmed. The claimant did not refuse a suitable offer of employment while her claim for benefits was active. The claimant is eligible for benefits, provided she is otherwise eligible.

jt/kkf