

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

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LORI WOOD CONSERVATORSHIP
c/o BARBARA WOOD
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COUNCIL BLUFFS IA 51503 5919

Appeal Number: 04A-UI-10315-H2T
OC 08-22-04 R 12
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 – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 14, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 14, 2004. The claimant did participate. The employer did participate through (representative) Barbara Wood, Lori Wood and Don Wood. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant first started working for the employer in September 2000. Since the claimant began her employment she has worked as a caregiver on a set schedule during the school year and on an as-needed or on-call basis during the summer. The claimant had sought other

employment during summers previous to 2004 to obtain additional income since the employer cut her hours during the summer time. On June 3, 2004 the employer told the claimant that she would be needed for work in the summer but did not offer her a set schedule as she had during the school year. In the past three plus years of her employment the claimant had worked substantially reduced hours during the summer because another person was available to provide care. The employer called the claimant on only four occasions to work during June, July and August 2004. On most of the dates listed in employer's exhibit one where the employer alleges the claimant could have worked, no offer of work was made to the claimant on those days. The claimant was not asked to work those days so it was impossible for her to refuse an offer of work during those days. During the entire course of the claimant's employment she has never worked partial days. During the summer the claimant's employment has always been on an as needed basis with a significant reduction in her hours during the summer. No specific guarantees of any days of work were offered to the claimant for the summer. The claimant worked another job at Quality Living in Omaha in addition to the work for this employer and had a set schedule of 3:00 p.m. to 11:00 p.m. on Sunday nights. During the school years the claimant worked approximately 25 to 30 hours per week. During the summers previously the claimant had only worked an average of four hours per week. Because the claimant did work on the days she was called to work it is found that she did not refuse a suitable offer of work. The claimant has been able to and available for work since filing her claim and did not limit her availability to the employer as she worked every hour she was offered.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not 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 only called the claimant to work on four separate occasions. On each of the occasions the claimant was offered work she did in fact work. The claimant was working a reduced number of hours at the employer's behest in the summer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 14, 2004, reference 01, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/s