

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA HOLLEY
Claimant

APPEAL NO: 07A-UI-09286-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 08/26/07 R: 02
Claimant: Appellant (4)

Section 96.4-3 - Availability for Work
871 IAC 26.14(7) - Late Call
Section 17A.12-3 - Non-Appearance of Party

STATEMENT OF THE CASE:

Christina Holley (claimant) appealed an unemployment insurance decision dated September 28, 2007, reference 02, which held that she was not eligible for unemployment insurance benefits because she refused to accept suitable work with Kelly Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 17, 2007. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available, and if so, whether she refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer offered work to the claimant on approximately September 10, 2007. She accepted the position but later had to refuse because she did not have child care. The claimant still does not have child care and is unavailable for work.

The employer called the Appeals Section for the first time on October 17, 2007, at 9:37 a.m. The record closed at 9:09 a.m. The employer received the hearing notice prior to the October 17, 2007 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The employer did not follow the hearing notice instructions but assumed they would be called. The employer requested that the record be reopened.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer's request, to reopen the record after the hearing had concluded, should be granted or denied. If a party responds to a hearing notice after the record has been closed, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The next issue to be determined is whether the claimant should be disqualified for refusing a suitable offer of work and for the following reasons, the administrative law judge concludes she should not.

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 child care 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.

The employer offered the claimant work on approximately September 10, 2007 which she refused because of lack of child care. The offer may have been suitable, but the reason for the failure to accept the work was because the claimant was not available and this is a good cause reason for refusing work. Consequently, she is not disqualified from receiving benefits due to a job refusal, but is not eligible for benefits as of September 15, 2007. Benefits are withheld until such time as the claimant becomes available.

DECISION:

The unemployment insurance decision dated September 28, 2007, reference 02, is modified in favor of the appellant. The claimant is not available for work and benefits are denied as of week ending September 15, 2007.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs