

**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**

**CHANDRA FRAISE
1726 ½ AVE H
FORT MADISON IA 52627**

**TEMP ASSOCIATES
1000 N ROOSEVELT AVE
BURLINGTON IA 52601**

**Appeal Number: 06A-UI-00533-ET
OC: 08-28-05 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 96.6-2 – Timeliness of Appeal
Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the December 7, 2005, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 15, 2006. The claimant participated in the hearing. Jenny McNeil, Account Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer received the representative's decision and appealed it December 9, 2005. The Department told the employer it did not receive the appeal and the employer subsequently faxed its' confirmation report. This is sufficient evidence to demonstrate the employer did appeal in a timely manner.

The claimant was employed as a full-time general laborer for Temp Associates last assigned at Wineguard from August 9, 2004 to August 29, 2005. She was discharged for attendance issues. On November 16, 2005, the employer offered the claimant a position as a full-time general laborer/assembly person at Vista Bakery. The claimant declined the position because she was eight months pregnant and her doctor wanted her to only work at jobs in which she could sit. She had her baby December 7, 2005, and did not claim benefits for the six weeks that followed. She was released to return to work without restrictions effective January 24, 2006.

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 work offered by the employer was not suitable because the claimant was restricted to working a job allowing her to sit rather than requiring her to stand. If she had accepted the position in violation of her doctor's restrictions she could have risked her health as well as that of her soon- to- be-born baby. The claimant did not claim any benefits during her six-week maternity leave and was released to return to work without restrictions January 24, 2006. Consequently, the administrative law judge concludes the job offered was not suitable, the claimant is able and available for work and has not been overpaid benefits. Therefore, benefits are allowed.

DECISION:

The December 7, 2005, reference 02, decision is affirmed. The employer's appeal is timely and the claimant did not refuse a suitable offer of work, is able and available for work and is not overpaid benefits. Benefits are allowed, provided the claimant is otherwise eligible to receive them.

je/pjs