

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNY L KREMER**  
Claimant

**APPEAL NO. 06A-UI-11282-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 10/22/06 R: 04  
Claimant: Respondent (5)**

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 16, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 11, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with witnesses, Diane Shaufenbuel and Nikki Kiefer. During the hearing, the employer stated that their protest and appeal were based on the claimant refusing suitable work not her separation from employment. Consequently, the issues for the hearing as listed below.

**ISSUES:**

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant began work in September 2005 as a temporary worker but later became an administrative assistant working directly in the staffing office in Dyersville, Iowa. Her rate of pay was \$8.50 per hour for 40 hours per week of work. She worked in that capacity from November 30, 2005, to October 24, 2006, when her employment ended. The claimant's supervisors informed her that she was being let go because they did not believe she had the commitment to perform the job.

The claimant filed an unemployment insurance claimant with an effective date of October 22, 2006. Her average weekly wage based on her high quarter of wages in her base period was \$365.70.

After the claimant was informed that she was being dismissed because she lacked the commitment necessary to work for the employer, the claimant was offered two potential job



opportunities with client businesses. The first job was as a receptionist for New Energy at a \$10.00 per for 40 hours of work per week. The job was located in Dyersville and the rate of pay was comparable to the going rate of pay for similar working in the area.

The claimant did not understand that the employer was offering her a job at New Energy. She believed she was being given the opportunity to interview for a job. She declined the job opportunity. She was not interested in the job because she had applied for a clerical job at New Energy when she was working as a temporary employee for the employer in 2005. During the interview, the interviewer acted disinterested in the claimant after she found out when the claimant had completed her education. She was never contacted afterward by New Energy, which the claimant believed was because the interviewer decided she was too young. She had also worked with New Energy as a client business. The employer had attempted to place several employees with New Energy by sending resumes for prospective employees but only one was hired. That person quit, and the claimant understood it was because of adverse working conditions.

After declining the job opportunity with New Energy, the claimant was offered a second job working as a customer service representative for a health insurance business, Codingham and Butler. The job was full time and the rate of pay for the job was \$9.00 per hour. The job was located in Dubuque, which is over 40 miles from the claimant's residence, and the rate of pay was comparable to the going rate of pay for similar working in the area. As a result of the commuting distance and pay, the claimant declined the job.

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

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The unemployment insurance rules provide that in order to be disqualified under the refusal of suitable work provisions, there has to be a bona fide offer of work and a definite refusal. A claimant can only be disqualified for not accepting a referral to job opening if the referral is made by a representative of the Department. 871 IAC 24.24(1). The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant very credibly testified that she understood that the employer was offering her the opportunity to send her resume to New Energy, which had been the practice with other employees when there were job openings there. Even if the employer had the ability to offer the actual receptionist position, this was not made clear to the claimant. A preponderance of the evidence establishes claimant believed she was being offered a chance to be selected for the receptionist job, which would not be a bona fide offer of work.

Considering the fact that the claimant had only been unemployed for a few minutes at the time she was offered the job in Dubuque, the work was unsuitable considering the fact that the job paid \$9.00 per hour and involved an 80-mile commute each day.

**DECISION:**

The unemployment insurance decision dated November 16, 2006, reference 01, is modified in favor of the claimant. The claimant did not fail to accept an offer of suitable work without good cause. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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