

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL L BARNES
Claimant

APPEAL NO. 08A-UI-02970-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 04/01/07 R: 03
Claimant: Respondent (1)

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 March 18, 2008, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 9, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy McGregor participated in the hearing on behalf of the employer with a witness, Molly Jacobson.

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 worked for the employer from October 31, 2007, to January 27, 2008, on an assignment at CCB Packaging. She worked on the third shift because she was responsible for getting her eight-year-old ready for school in the morning. When she was hired, she indicated that could not work the first shift.

The claimant got sick at work on January 27, 2008, and was sent home. The next day, the employer informed the claimant that CCB Packaging did not want her to return to work there.

On January 29, 2008, the employer offered the claimant a first shift job working at CCB Packaging. It offered the same rate of pay and similar work. The claimant declined the job because of her family obligation to take her sister to school. On January 30, the employer offered the claimant a mail sorting job at PSI Company at a rate of pay of \$8.00 per hour. The claimant declined the job because she was told that the job was just for one day.

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 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 testified credibly and consistently. Her testimony outweighs the employer's evidence. The claimant had good cause for declining the first shift job at CCB Packaging due to her family obligations. The claimant was told that the PSI job was for one day, which would make the job unsuitable under Iowa Code section 96.5-3-a.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a claimant need not be available for all shifts and a claimant is available for work as long as she remains available during the hours she previously worked. 871 IAC 24.22(2)a. The claimant has remained available for any shift other than the first shift, which satisfies the requirements of the law.

DECISION:

The unemployment insurance decision dated March 18, 2008, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css