

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A DAVENPORT
Claimant

APPEAL NO. 07A-UI-04029-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLART INC
HACIENDA LAS GLORIAS #2
Employer

OC: 03/18/07 R: 03
Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Nellart (employer) appealed a representative's April 10, 2007 decision (reference 03) that concluded Julie Davenport (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2007. The claimant participated personally. The employer participated by Edgar Barrios, Owner; Kent Millsap, Manager, and Tia Barrios, Waitress.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 30, 2005, as a part-time bartender. Her last day of work was March 9, 2007. No offer of work was made to the claimant by the employer. The claimant filed her claim for unemployment insurance benefits on March 18, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant did not refuse an offer of suitable 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.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

No offer of work was made by the employer to the claimant on March 9, 2007. The claimant filed her claim for benefits on March 18, 2007. If there is no valid claim for unemployment insurance benefits on file, there can be no disqualification if work is refused. The claimant is not qualified to receive benefits, provided she is otherwise eligible.

DECISION:

The representative's April 10, 2007 decision (reference 03) is affirmed. The claimant is qualified to receive benefits, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs