

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE K KANE
Claimant

APPEAL NO. 08A-UI-08024-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DAVENPORT COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 08/03/08 R: 04
Claimant: Respondent (1)**

Section 96.5-3-a – Suitable Work
Section 96.4-3-a – Available for Work

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated September 3, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 1, 2008. The claimant participated. The employer participated by Jenni Weipert, Associate Director of Human Resource Services.

ISSUE:

At issue in this matter is whether the claimant refused suitable work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer on July 31, 2008. Ms. Kane was employed as a part-time para-educator working six hours per day at the rate of \$8.44 per hour. On August 18, 2008 the claimant was offered a para-health position with the school district working four hours per day at the same rate of pay. The claimant expressed some concerns about the one-third reduction in working hours each day and the possibility of losing health insurance coverage because she had dropped below the minimum five hours per day required. Based upon the verbal conversations between the parties, Ms. Weipert believed that Ms. Kane was accepting the position that was offered. In that position the claimant was required to work only four hours per day and was to split her services between two schools. The claimant, who was still considering the offer, did not report for the first day's work as she was attempting to obtain more information from the school district about a potential loss of insurance coverage. On Friday, August 22, Ms. Weipert again had a conversation with Ms. Kane and was informed that if the claimant did not report for scheduled work the following Monday the district would consider that she had voluntarily quit the position by failing to report for three consecutive workdays without notice. Although the claimant was reassured that she would not lose her health benefits, Ms. Kane never reported for work deciding not to accept the offer as it was a substantial reduction in pay due to her hours being reduced from six hours per day to four hours

per day, although she had the option of bidding on other positions if a position opened offering more hours.

The claimant is actively and earnestly seeking new employment by contacting perspective employers and being interviewed for job positions.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Kane accepted an offer of work and if not if she had good cause for refusing the offer.

For the reasons that follow the administrative law judge concludes that Ms. Kane did not accept the offer and has established good cause for her failure to accept the offer of work. The evidence in the record establishes that although the employer may have believed the claimant accepted employment, Ms. Kane did not report for work at any time after her separation from employment on July 31, 2008. The evidence establishes that the claimant continued to have serious doubts about accepting the position based upon a substantial reduction in working hours and the potential for losing healthcare benefits. Ms. Kane reiterated her concerns after she did not report for the initial day that the employer expected her to be on the job and did not accept employment by reporting for work and performing services for the employer.

The question then becomes whether Ms. Kane had good cause for refusing the offer of a similar job position with the Davenport Community School District. The evidence in the record establishes that although the rate of pay per hour is the same, the claimant's working hours were reduced by at least one-third. The record shows that it had been only approximately three weeks since the claimant had filed her most recent new or additional claim. The offer of work was less than one hundred percent of her previous average weekly wage.

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

For the reasons stated herein the administrative law judge concludes the job offer did not provide wages of at least one hundred percent of the claimant's average weekly wage during the first five weeks of unemployment.

DECISION:

The representative's decision dated September 3, 2008, reference 01, is affirmed. The claimant did not accept an offer of work as the wage did not provide one hundred percent of the average weekly wage after three weeks of unemployment.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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