

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M MCNUTT
Claimant

APPEAL NO. 11A-UI-14102-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 10/02/11
Claimant: Appellant (5)**

Section 96.5(3)(a) – Work Refusal
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Lisa McNutt filed a timely appeal from the October 21, 2011, reference 01, decision that denied benefits based on an Agency conclusion that she had refused recall to suitable work with L.A. Leasing on April 8, 2011. After due notice was issued, a hearing was held on November 17, 2011. Ms. McNutt participated. Colleen McGuinty, unemployment insurance benefits administrator, represented the employer and presented additional testimony through LaKendra Stafford, account manager.

ISSUES:

Whether the claimant refused a suitable offer of employment with L.A. Leasing.

Whether the claimant has been available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa McNutt established a claim for benefits that was effective October 2, 2011. Ms. McNutt's base period employment for purposes of the unemployment insurance claim consists entirely of part-time, temporary work she performed for temporary employment agency L.A. Leasing. The employer placed Ms. McNutt in multiple short-term assignments at the same client business, Fidlal Printing Company in Davenport. Ms. McNutt most recently completed an assignment for L.A. Leasing at Fidlal Printing Company on April 8, 2011. Contrary to what is set forth in the October 21, 2011, reference 01 decision, Ms. McNutt did not refuse any offer of employment that day. Instead, an L.A. Leasing representative contacted Ms. McNutt to let her know April 8, 2011 would be her last day in the assignment.

L.A. Leasing next contacted Ms. McNutt on May 9, 2011 to recall her to perform additional work for Fidlal Printing Company on May 9-11, 2011. Ms. McNutt accepted recall to the assignment while she was on the telephone with the L.A. Leasing representative, but then notified the employer that same day that she could not report for the assignment because she had to take

her mother to the hospital. Ms. McNutt's mother has emphysema and chronic obstructive pulmonary disease (COPD). Ms. McNutt lives with her mother and was the only person available to take her mother to the hospital on May 9, 2011. Ms. McNutt's mother was hospitalized for three to four days.

L.A. Leasing next contacted Ms. McNutt on June 29, 2011 to recall her to work at Fidler Printing Company during the period of June 29 through July 15, 2011. Ms. McNutt indicated she could not appear for the assignment because she lacked transportation. Ms. McNutt had her own transportation until May 2011. Ms. McNutt's vehicle then broke down. Ms. McNutt did not get her car fixed or acquire additional transportation. Ms. McNutt asserts that her cousin, who is currently laid off, can provide her a ride as needed.

L.A. Leasing had no further contact with Ms. McNutt after June 29, 2011.

Ms. McNutt takes college classes online and engages in this activity whenever she has time between the hours of 8:00 a.m. and 8:00 p.m. Ms. McNutt continued to live with her mother. Ms. McNutt's mother is dependent on oxygen concentrating machines. Ms. McNutt has to be available to get her mother to the hospital on short notice.

Ms. McNutt has applied for work at a couple businesses.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns ten times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 871 IAC 24.24(4) states as follows:

Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work ... such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The weight of the evidence indicates that there was no work refusal in April 2011. The evidence indicates a work refusal on May 9 and June 29, 2011. In both instances, Ms. McNutt had good cause for refusing the work. In the first instance, she needed to deal with her mother's serious illness. In the second instance, she lacked transportation. Under 871 IAC 24.24(4) each of these situations involved good cause for refusing the work offer. Thus, the two work refusals would not disqualify Ms. McNutt for unemployment insurance benefits.

The remaining issues relate to whether Ms. McNutt can be deemed available for work since she established the claim for unemployment insurance benefits that was effective October 2, 2011.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. McNutt's employment relationship with L.A. Leasing was the standard temporary employment relationship and was not on-call employment for unemployment insurance purposes. See 871 IAC 24.22(2)(i).

Ms. McNutt has failed to present sufficient evidence to establish that she has been available for work since she established the claim for benefits that was effective October 2, 2011. Ms. McNutt's work search activity has been minimal. Ms. McNutt lacks transportation to get to and from employment. Though Ms. McNutt's cites her laid-off cousin as a source of transportation, that resource has not led to an active work search and would presumably dry up once the cousin was re-employed. Ms. McNutt's responsibilities to her mother prevent her from being available for work. Ms. McNutt's studies impact her availability for work. Each of these issues argues against Ms. McNutt being available for work. See 871 IAC 24.23. The weight of the evidence indicates that Ms. McNutt is just not that interested or motivated to be employed. Ms. McNutt may have good reasons and not-so-good reasons for that. The evidence indicates that Ms. McNutt is minimally, if at all, involved in the labor market. Benefits are denied effective October 2, 2011. The disqualification continues as of the November 17, 2011 appeal hearing.

DECISION:

The Agency representative's October 21, 2011, reference 01, is modified as follows. The claimant did not refuse an offer of suitable employment in April 2011. The claimant refused an offer of suitable employment on May 9, 2011 and June 29, 2011, but did so for good cause in each instance. The claimant has not met the work availability requirement since she established her claim for benefits. Benefits are ended effective October 2, 2011. The availability disqualification continued as of the November 17, 2011 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw