

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE K CALLAHAN
Claimant

APPEAL NO. 06A-UI-11254-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETHANY ENTERPRISES
Employer

**OC: 10/15/06 R: 04
Claimant: Respondent (1)**

Section 96.4-3 – Able and Availability for Work
Section 96.5-3(a) – Refusal of Suitable Work
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 17, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 11, 2006. The claimant participated. Participating as witnesses for the employer were Bill Earnst, Ann DeFreeze, and Dana McReynolds.

ISSUE:

At issue in this matter is whether Ms. Callahan refused an offer of suitable work and whether the claimant is able and available for work.

Also at issue is whether the claimant received an overpayment of unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds that Ms. Callahan was employed by the captioned company, doing business as a day cook and kitchen manager from May 2005 until June 12, 2006. Ms. Callahan was employed on a full-time basis and was paid by salary. Her immediate supervisor was Anna DeFreeze, Store Manager.

On June 12, 2006, the claimant left work due to a May 31, 2006, injury to her knee that had occurred at work. The claimant visited her doctor and was taken off work for a two-week period. Subsequently, the claimant was referred to an orthopedic doctor. On July 3 the claimant was released to return to light duty of a sedentary nature. Although the claimant attempted to work at that time, she was informed by the facility manager that no work was available to her, as the employer did not allow employees to work with restrictions.

Ms. Callahan attempted to return to employment and visited with Ms. DeFreeze on July 24, 2006. At that time, Ms. DeFreeze stated that she wished to speak with the company owner before scheduling the claimant. On July 25 Ms. DeFreeze called the claimant to inform her that the claimant's job no longer existed. The claimant at that time had received a doctor's release to return to work effective July 31, 2006, without restrictions. Based upon the elimination of the claimant's job and because of swelling some additional that the claimant had experienced with her knee, her physician decided to do arthroscopic surgery and performed surgery on August 1, 2006. Subsequently, on or about September 11, 2006, the employer offered the claimant a position of a "day cook." As the claimant's managerial authority was removed and benefits that went with the management position were not included, Ms. Callahan declined the offer.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.23(3) provides:

- (3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

It is the opinion of the administrative law judge, based upon the evidence at the hearing, that the claimant did not place undue restrictions on her employability based upon the length of time that she had been unemployed and the change in job positions offered by this employer. The position offered by the employer on or about September 11, 2006, was substantially different than the position the claimant had previously held. The claimant lost management authority and the benefits that were enjoyed in that management position. Therefore, the administrative law judge finds that the claimant has established good cause for refusing the position of day cook continues to be available for work and has met the availability requirements of Iowa Code section 96.4-3.

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

The administrative law judge finds that the conditions at work offered were substantially less than the position previously enjoyed by the claimant. The administrative law judge notes that although the claimant had attempted to return to work in the past, she was not allowed to do so. Subsequently, the claimant was offered a position without management authority or benefits that the claimant had previously had prior to being injured on the job. The administrative law judge finds that the claimant is able and available to work in the employment market. The claimant has established good cause for refusing to accept the offer of work that was subsequently made the employer after the employer had on more than one occasion refused to allow the claimant to return to work when she was willing to do so.

DECISION:

The decision of the representative dated November 17, 2006, reference 01, is affirmed. The claimant was not claiming benefits at the time and has established good cause for failing to accept the offer. Claimant is eligible to receive unemployment insurance benefits, provided that she satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/css