

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHRYN E OLSON**  
Claimant

**APPEAL NO. 10A-EUCU-00967-L**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINEY RIDGE GREEN HOUSE INC – LP2**  
Employer

**OC: 11/11/07**  
**Claimant: Respondent (4)**

Iowa Code § 96.5(3)a – Work Refusal  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 18, 2010 (reference 03) decision that allowed benefits. After due notice was issued, a hearing was held on December 6, 2010 in Des Moines, Iowa. Claimant participated. Employer participated through partner Ann Borwick, owner David Laurenitzen, and owner Roger Bishop.

**ISSUE:**

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason and if she is able to and available for work effective February 16, 2010.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time seasonal cashier and plant tender seasonally from March 2009 through June 13, 2009 when she was laid off for the season through February 16, 2010. On December 5, 2009 employer mailed her a rewritten paycheck to replace one that was lost in July. Borwick included a Christmas card that said they would begin work in February 2010. Employer sent claimant her W-2 at the end of January 2010 with a note that said, "See you February 16, 2010" but never heard from her. Claimant does not have a phone and gets messages through her son's cell phone. Employer did not send a certified return receipt letter. Claimant did not contact the employer about work for the season beginning February 16, 2010 because she assumed they did not want her to return and her feelings were hurt even though Laurenitzen spoke with her in May 2009 complimenting her work and urged her to return the following season; Borwick told her on the last day of work that the employer was lucky to have employees return from season to season and said, "once you're in, you're in;" and invited her to an end-of-season picnic at Borwick's home.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not receive an offer of work but she failed to make herself available or apply for suitable work.

Iowa Code § 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(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 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 and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for 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.

Iowa Code § 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".

Since the employer did not have personal contact with the claimant about the specific terms of the offer (date, wages, job, etc.), claimant did not refuse an offer of work. However, the record reflects that she was aware of the season during which employer had work available and failed to apply for suitable work. Her erroneous assumption that employer did not want her back and hurt feelings do not constitute good cause reasons for failing to apply or make herself available for suitable work. Therefore, claimant is not disqualified from receiving benefits, but is not eligible for the period from February 16, 2010 to June 12, 2010, which is an equivalent period of time she worked during 2009. Since no benefits were claimed during this period of time, no overpayment applies.

**DECISION:**

The October 18, 2010 (reference 03) decision is modified in favor of the appellant. Claimant did not decline an offer of work but was unavailable at the time. Benefits are withheld from February 16, 2010 to June 12, 2010.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs