

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY A LAYMON

Claimant

APPEAL NO. 14A-UI-06014-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 03/16/14

Claimant: Appellant (1)

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Judy Laymon (claimant) appealed a representative's June 4, 2014, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she refused suitable work with Team Staffing Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 3, 2014. The claimant participated personally. The employer participated by Sarah Fiedler, Human Resources Generalist.

ISSUE:

The issue is whether the claimant refused 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 employer is a temporary agency. The claimant was hired on November 5, 2013, as a full-time general laborer assigned to work at C.D.S. in the Tipton, Iowa, area. At the time she was hired the claimant indicated she would work in the Durant, Muscatine, and Wilton areas. The claimant lives in Wilton, Iowa. The claimant's separation from employment was decided in 14A-UI-03754-MT on April 30, 2014, and affirmed by the Employment Appeal Board on June 13, 2014. Administrative Law Judge Mormann determined the claimant "terminated the employment relationship because the employer ended the assignment due to reported illness and the claimant asked for further assignments."

The claimant filed for unemployment insurance benefits with an effective date of March 16, 2014. Her average weekly wage as calculated from the highest quarter in her base period was \$347.77. She received unemployment insurance benefits for seven weeks when the employer offered the claimant three jobs on May 5, 2014.

The employer offered the claimant an assignment at C.C.O. in Moscow, Iowa, 15 minutes from Wilton, Iowa. The job paid \$8.00 per hour, or \$320.00 per week, for 40 hours of work per week on first shift as an assembler. The claimant refused the work because she wanted to earn

\$9.00 per hour and only wanted to work in Wilton, Iowa. The employer offered the claimant an assignment at H.W.H. in Moscow, Iowa, 15 minutes from Wilton, Iowa, as an assembler. The job paid \$9.00 per hour, or \$360.00 per week, for 40 hours of work per week on first shift. The claimant refused the work because she only wanted to work in Wilton, Iowa. The employer offered the claimant an assignment at O.F.C. as a production worker in Muscatine, Iowa, 11 minutes from Wilton, Iowa. The job paid \$9.00 per hour, or \$360.00 per week, for 40 hours of work per week on first shift. The claimant refused the work because she only wanted to work in Wilton, Iowa. At the hearing the claimant said she refused all the jobs because she did not want to work for this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant refused to accept an offer of 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.

The work was offered within seven weeks of the claimant's unemployment and was required to provide the claimant wages 75 percent of those paid to the claimant during the highest quarter of her base period. Seventy-five percent of the claimant's average weekly wage (\$347.77) is \$260.82. The employer offered the claimant \$320.00 and \$360.00 per week. The evidence establishes that the claimant would have received 75 percent of her average weekly wages during her highest quarter of earnings.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The claimant argues she did not wish to go back to work for this previous employer. Work with a previous employer is not suitable if the work is not the usual type of work the claimant performed or if the condition that caused the previous quit is still in existence. The claimant did not argue that the type of work was at issue. The claimant admitted at the hearing that the conditions that caused the previous quit do not still exist. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was suitable work. The claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 4, 2014, decision (reference 03) is affirmed. The claimant is not qualified to receive unemployment insurance benefits because she refused suitable work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs