IOWA WORKFORCE DEVELOPMENT Unemployment Insurance Appeals Section 1000 East Grand—Des Moines, Iowa 50319 DECISION OF THE ADMINISTRATIVE LAW JUDGE 68-0157 (7-97) – 3091078 - EI

SAMANTHA L BEELER 2524 LOGAN AVE DES MOINES IA 50317

ANNA ENTERPRISES STAFFING SOLUTIONS 7600 UNIVERSITY AVE CLIVE IA 50325 Appeal Number: 04A-UI-11273-BT

OC: 06/06/04 R: 02 Claimant: Respondent (3)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board*, 4th Floor—Lucas Building, Des Moines, Iowa 50319.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

- The name, address and social security number of the claimant.
- A reference to the decision from which the appeal is taken.
- 3. That an appeal from such decision is being made and such appeal is signed.
- 4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)
(Decision Dated & Mailed)

Section 96.4-3 - Availability for Work Section 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Staffing Solutions (employer) appealed an unemployment insurance decision dated October 13, 2004, reference 06, which held that Samantha Beeler (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2004. The claimant participated in the hearing. The employer participated through Wendy Kirby, Account Coordinator.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began working for the employer on June 14, 2004 and her assignment ended on September 10, 2004. The employer offered her work on September 23, 2004 and the claimant accepted. It was a temp-to-hire production position and paid \$8.83 per hour, which is more than she was earning at her last job. The claimant did not report to complete the necessary paperwork with the employer and later called to indicate she was not accepting the offer of work. She later declined the position because of lack of transportation. The job was located in Adel, lowa, which is approximately 15 miles from the employer's facility. The claimant has a vehicle but does not want to drive it very far as it needs work and she cannot afford to pay for the work to be done at this time.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

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 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

871 IAC 24.23(18) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The claimant contends that she is able and available for work but admits she does not have reliable transportation so cannot work very far from her home. The claimant has limited her availability to work to a specific geographical area. Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

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.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of lowa 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 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.

The employer did offer suitable work to the claimant but she refused that offer due to lack of transportation. The claimant had good cause for refusing work but consequently does not meet the availability requirements of the law. Benefits are denied.

DECISION:

The unemployment insurance decision dated October 13, 2004, reference 06, is modified in favor of the respondent. The claimant does not meet the availability requirements of the law and therefore does not qualify for unemployment insurance benefits.

sdb/s