

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKISHA S TAYLOR
Claimant

APPEAL NO. 08A-UI-11335-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN KNOBEL & SON INC
Employer

**OC: 09/14/08 R: 04
Claimant: Appellant (1)**

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 1, 2008, reference 04, that concluded she had failed to accept suitable work without good cause. A telephone hearing was held on December 16, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Brad Krogull participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's average weekly wage based on the high quarter of earning in her base period is \$153.00 based on her employment with McDonalds during the third quarter of 2007. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant worked part time for the employer as a crew member from January 31, 2008, to September 11, 2008, about 10 to 15 hours per week. She was paid \$7.50 per hour. She worked while attending high school. The claimant also worked part-time for Hy-Vee while working for the employer.

In September 2008, the employer learned that the claimant was involved in an altercation at school with several students, and that the claimant had been charged with assault as a result of the incident. The employer informed the claimant that she would not be able to return to work until her personal problems were resolved. The employer was concerned about potential retaliation from the altercation that could effect the safety of the customers and employees while the claimant was working.

On October 10, 2008, the employer sent the claimant a letter by registered mail, return receipt requested offering her job back. The offer provided the same wages, hours, and job duties. The offered work would be about \$112.00 per week. The wages are comparable to the

prevailing rate of pay for similar work in the Burlington area. She was given three days to accept the offer.

The claimant received and signed for the letter on October 14, 2008. She failed to accept the offer because she did not think the employer treated her fairly when she was taken off work in September and she did not want to work any more hours because of her school attendance and working at Hy-Vee.

The claimant's average weekly wage based on the high quarter of earning in her base period is \$153.00 based on her employment with McDonalds during the third quarter of 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

Iowa Code section 96.5-3 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....

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.

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 offer of work in this case was made during the first five weeks of unemployment. Applying § 96.5-3-a, the claimant would not be subject to disqualification because the wage offered for the job was not equal to 100 percent of \$153.00, her average weekly wage in her highest quarter of wages in her base period. The case law makes it clear that it does not matter what the reason for the refusal is, a claimant is not subject to disqualification if the work offered does not meet the wage requirements of the law. Biltmore Enterprises, Inc., v Iowa Department of Job Service, 334 N.W.2d 284 (Iowa 1983).

The rules, however, provide that a claimant is disqualified based on an offer of work from 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 section 96.5(3) ‘b’ are controlling in the determination of suitability of work.” 871 IAC 24.24(14). I believe this rule applies in a case like this where a former employer calls an employee back to the same job, for same wages, and with same hours as previously employed. In such a case the wage formula found in Iowa Code section 96.5-3-a would not apply and the claimant would be disqualified as long as the conditions in Iowa Code section 96.5-3-b are met.

I conclude that the work offered the claimant was suitable and the claimant did not have good cause to decline the job based on her being off work was unfair and because she wanted to limit her hours due to school work and working at Hy-Vee. The rules provide that a student must remain available for work to the same degree and extent as when her base period wages were earned. 871 IAC 24.22(2)f. It is understandable that the claimant would want to limit her hours to make sure she was able to keep up her grades, but she cannot do so and continue to receive unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated December 1, 2008, reference 04, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs