

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA M PERDUE
Claimant

APPEAL NO. 07A-UI-07413-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORTH KOSSUTH COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 07-01-07 R: 02
Claimant: Respondent (1)

Section 96.5(3)a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 25, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 16, 2007. The claimant did participate. The employer did participate through Mike Landstrum, Superintendent and was represented by Rich Engel, Attorney at Law. Employer's Exhibit One was received.

ISSUES:

Is the claimant able to and available for work?

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant has worked for the school district since August 1978. Since 2001 she has worked primarily as the lunch secretary, transportation director and in the office of the middle school. During the summer breaks the claimant would help out with summer time maintenance work.

The superintendent decided for business reasons to change job duties and responsibilities of some employees including the claimant in an effort to meet budget demands.

The claimant was not offered her same job duties for the school year beginning in June 2007. Instead the claimant was offered a position as a full time janitor in the middle school. The offer was for more money than the claimant had previously been paid. The claimant turned down the job because she did not want to engage in primarily janitorial work during the daytime. The job duties the claimant would have been required to engage in were different from the duties she had been performing for the prior five years. Summer maintenance work is different from day-to-day janitorial work in the school when the students are in session. The claimant had

never previously had as her primary job duty daytime maintenance worker or janitorial worker. The claimant did not enjoy janitorial work as a full time job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

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.

The administrative law judge concludes the offer was unsuitable, as it was not work that the claimant had previously done in her almost thirty years as an employee of the school district. The claimant was not required to accept any offer of work as long as the pay is greater than

what she was previously paid. The claimant had never previously done full time janitorial work only. The fact that over the summers she helped get the school ready for the school years is not work similar in nature or tasks to acting as the full time day-to-day janitor. The claimant's prior training is not in janitorial work but in office work and transportation. The administrative law judge determines that the janitorial work offered to the claimant was not suitable based on her length of service and prior job responsibilities. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 25, 2007, reference 01, decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css