

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

JETTA S PENNINGTON  
3915 13<sup>TH</sup> ST  
DES MOINES IA 50313

PALMER COMPANIES INC  
D/B/A PALMER STAFFING  
3737 WOODLAND AVE #300  
WEST DES MOINES IA 50266

Appeal Number: 06A-UI-02336-RT  
OC: 01-01-06 R: 02  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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

1. The name, address and social security number of the claimant.
2. 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3 – Failure to Accept Work  
Section 96.4-3 – Required Findings (Able and Available for Work)  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Palmer Companies, Inc., doing business as Palmer Staffing, filed a timely appeal from an unemployment insurance decision dated February 17, 2006, reference 03, allowing unemployment insurance benefits to the claimant, Jetta S. Pennington. After due notice was issued, a telephone hearing was held on April 3, 2006, with the claimant participating. Tammy Sanders, Staffing Manager, participated in the hearing for the employer.

The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective January 1, 2006. On or about January 25, 2006, the employer, Palmer Companies, Inc., doing business as Palmer Staffing, offered the claimant a one-day assignment the next day, on or about January 26, 2006, from 10:00 a.m. to 4:00 p.m. This was merely a one-day assignment. The claimant did not accept the assignment because it was merely for one day, did not pay enough and she did not have time to find a babysitter in time to accept the one-day assignment. The claimant refused the assignment. Later the claimant accepted an assignment from the employer with Arag Group beginning February 17, 2006. The claimant left this assignment on March 17, 2006, before the assignment was completed, to take a permanent full time job with Guide One Insurance, which began March 20, 2006. The claimant's assignment at Arag Group, would have lasted until approximately June or July of 2006. The claimant has placed no physical restrictions or training restrictions on her ability to work. The claimant has placed no time or day or location restrictions on her availability for work except that she cannot work after 5:00 p.m. because of babysitting. The claimant, until she found employment, was earnestly and actively seeking work by making two in-person job contacts each week. The claimant's average weekly wage for unemployment insurance benefit purposes is \$601.30. Pursuant to her claim for unemployment insurance benefits filed effective January 1, 2006, the claimant has received unemployment insurance benefits in the amount of \$2,347.00 as follows: \$337.00 per week for six weeks from benefit week ending January 7, 2006 to benefit week ending February 11, 2006; and \$325.00 for benefit week ending February 18, 2006 (earnings \$96.00). The claimant has made no other weekly claims since.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is disqualified to receive unemployment insurance benefits because she refused to accept suitable work. The claimant is not disqualified to receive unemployment insurance benefits for this reason.
2. Whether the claimant is ineligible to receive unemployment insurance benefits, because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for those reasons.
3. Whether the claimant is overpaid unemployment insurance benefits. She is not.

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 that the employer has the burden to prove that the claimant has refused to accept suitable work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant refused to accept suitable work. The employer's witness, Tammy Sanders, Staffing Manager, testified that the employer had made no offers of work for the claimant prior to the offer that the claimant accepted on February 17, 2006. The claimant credibly testified that she was offered a one-day assignment on or about January 25, 2006 for the next day, on or about January 26, 2006, from 10:00 a.m. to 4:00 p.m. The claimant refused this offer because it did not pay enough and she did not have enough time to get a babysitter and it was not long term or permanent work. The employer then made the claimant an offer which she accepted and began on February 17, 2006. The claimant's average weekly wage for unemployment insurance benefit purposes is \$601.30. The assignment on January 25, 2006, was made in the claimant's fourth week of unemployment and would need to pay 100 percent of the claimant's weekly benefit amount and clearly this position does not, being only a one day position and then only part time for that day. The offer was also not suitable because the offer was made one day before the assignment was to start and the claimant had no time to get a babysitter. The offer was also not suitable because it was not permanent full time employment.

It is clear that when the claimant was offered full time permanent employment with the employer herein she accepted. Accordingly, the administrative law judge concludes that the employer did offer the claimant employment or work on or about January 25, 2006 but it was not suitable and therefore the claimant's refusal to accept such offer did not disqualify the claimant from receiving unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

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".

The administrative law judge concludes that the claimant has the burden to prove that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that at relevant times, she is, and was, able, available, and earnestly and actively seeking work. The claimant credibly testified that she has placed no physical restrictions or training restrictions on her ability to work and the employer's witness, Tammy Sanders, Staffing Manager, agreed. The claimant also testified that she has placed no time or day or location restrictions on her availability for work except that she does not want work after 5:00 p.m. because of babysitting. Again Ms. Sanders agreed. The administrative law judge concludes that the restriction of not working after 5:00 p.m. does not unreasonably impede or prevent the claimant from obtaining employment. The administrative law judge notes that the claimant accepted an assignment from the employer with Arag Group on February 17, 2006 and worked there until she was offered and accepted a permanent full time job with Guide One Insurance. The claimant also credibly testified that at relevant times, she was earnestly and actively seeking work by making two in-person job contacts each week. Accordingly, the administrative law judge concludes that the claimant is, and was, at relevant times, able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise entitled to such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,347.00 since filing for such benefits effective January 1, 2006. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of February 17, 2006, reference 03, is affirmed. The claimant, Jetta S. Pennington, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she did not refuse to accept suitable work and, at relevant times, she is, and was, able, available, and earnestly and actively seeking work. As a result of this decision the claimant is not overpaid any unemployment insurance benefits either because of the refusal to accept suitable work or because she was not able, available, and earnestly and actively seeking work.

kkf/tjc