

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

SHANTELE L BENDER  
16718 EMERSON ST  
INDIANOLA IA 50125

PYROGRAPHICS INC  
132 S 11<sup>TH</sup> ST  
WEST DES MOINES IA 50265

MARK W DENNISTON  
ATTORNEY AT LAW  
1005 HWY 5  
PO BOX 517  
CARLISLE IA 50047

THOMAS WERNER  
ATTORNEY AT LAW  
3030 INGERSOLL AVE  
DES MOINES IA 50312 3403

Appeal Number: 04A-UI-03128-H2T  
OC 02-08-04 R 02  
Claimant: Respondent (2)

**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

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-a – Work Refusal  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 11, 2004, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on April 14, 2004. The claimant did participate and was represented by Mark Denniston, Attorney at Law. The employer did participate through Dan Svec, Co-Owner, and Joy Svec, and was represented by Thomas Werner, Attorney at Law. Employer's Exhibit One was received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning January 13, 2004 through

February 12, 2004 when she was discharged as a result of a 25-pound lifting restriction imposed upon her by her physician due to her pregnancy. The day following her discharge, February 13, 2004, the employer made an offer of work to the claimant. The offer was for claimant to return to her job with the understanding that the employer would accommodate her work restriction of 25 pounds. That was exactly the circumstances that the claimant wanted the employer to provide for her the previous day when she notified them of her 25- pound lifting restriction. The offer included the claimant returning at the same wage she had been making and the offer was made to the claimant during the first week of unemployment.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did 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.

871 IAC 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 section 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 was offered her same job back with the understanding that the employer would accommodate her work restrictions. That is exactly what the claimant wanted the employer to provide for her only one day prior. The change in job duties that may have been necessitated by 25-pound lifting restriction were what the claimant had requested only one day prior to the offer of employment being made to her. The job was essentially the same job the claimant had been performing only the day before. The claimant did not voluntarily quit her job, thus the provisions of 871 IAC 24.24(14)(a)(b) are not applicable. The claimant was offered a return to her former position, with complete accommodation only one day after having been discharged. The job offer was for a suitable position. Her failure to accept the suitable offer of work renders her ineligible for unemployment insurance benefits effective February 13, 2004.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The March 11 2004, reference 03, decision is reversed. The claimant did refuse a suitable offer of work. Benefits are denied. The claimant is overpaid benefits in the amount of \$1,287.00.

tkh/b