

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARON RISDAL**  
Claimant

**APPEAL NO: 10A-UI-14688-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ULTIMATE NURSING SERVICES**  
Employer

**OC: 08-22-10**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 22, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 14, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the claimant is able and available, and if so, whether she refused a suitable offer of work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time registered nurse field staff for Ultimate Nursing Services from June 13, 2008 to September 24, 2010. She finished with one client August 16, 2010, and filed her claim for unemployment insurance benefits effective August 22, 2010. The employer offered the claimant a new client with the same pay of \$16.16 per hour. The claimant refused the job offer September 24, 2010, because she wanted to move on.

**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 24.22(1) and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence shows the claimant is able and available for work. 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(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Inasmuch as the claimant was offered employment with wages which at least equaled or exceeded her average weekly wage paid during the highest quarter of her base period, the administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, she is disqualified and benefits are denied as of week ending October 2, 2010.

**DECISION:**

The October 22, 2010, reference 02, decision is modified in favor of the appellant. The claimant refused a suitable offer of work September 24, 2010. Benefits are withheld as of the week ending October 2, 2010, and until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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