

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

TARA R PRATT  
1105 C AVE NW  
CEDAR RAPIDS IA 52405

ADECCO USA INC  
c/o FRICK UC EXPRESS  
PO BOX 66736  
ST LOUIS MO 63166-6736

Appeal Number: 04A-UI-09288-SWT  
OC: 07/11/04 R: 04  
Claimant: Appellant (4)

**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-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 18, 2004, reference 01, that concluded that the claimant refused suitable work without good cause on July 18, 2004. A telephone hearing was held on September 20, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Klaren Bentley participated in the hearing on behalf of the employer with a witness, Allison Rushford.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked part time for the employer on an assignment at Corporate Express from June 25, 2003 to July 18, 2004. The job was located in Iowa City and paid \$10.00 per hour for about 20 hours of work per week. The claimant completed the assignment. The claimant filed a new claim for unemployment insurance benefits with an

effective date of July 11, 2004. Her average weekly wage based on her high quarter of earnings in her base period was \$229.00 per week.

On July 27, 2004, the claimant was offered a new assignment working as a customer service receptionist for American Home Patient to start immediately. The assignment was full time and paid \$8.69 per hour for a weekly wage of \$347.60 per hour. The job was located in Coralville, which would be a slightly shorter distance from the claimant's residence as the job in Iowa City. The rate of pay for the job would be comparable to the going rate of pay for similar work in the area.

When offered the work, the claimant told the employer's representative that she would have to think about it and told her that she would call the employer the next morning. The claimant wanted to make sure that her 11-year-old son would have child care available if she accepted the job.

The claimant did not call the employer the next day. When the employer's representative called the claimant to find out what her decision was, she declined the job based on the rate of pay for the job. After the claimant declined the job, it was offered to another employee who accepted the job offer. Later that day, the claimant tried to call the employer to accept the job but the opening had already been filled. The claimant asserts that she was sleepy and under the effects of drugs she had taken for arthritis. She asserts that she did not know what she doing or saying when she turned down the job. The claimant in fact turned the job down because she wanted a higher rate of pay and then changed her mind later.

#### 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-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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Although the claimant asserted that she did not know what she was saying when she refused the offer of work, this seems unlikely considering the fact that she cited the rate of pay as the reason for turning down the job. Mostly likely, the claimant realized that she had jeopardized her unemployment insurance benefits by declining the job and then tried to undo what she had done by declining the job.

The job offered the claimant was suitable working applying all of the factors found in Iowa Code section 96.5-3. The claimant has not established good cause for refusing suitable work and is disqualified effective July 25, 2004, the Sunday before the refusal of work.

#### DECISION:

The unemployment insurance decision dated August 18, 2004, reference 01, is modified in favor of the claimant. The claimant is disqualified from receiving unemployment insurance benefits effective July 25, 2004, and continuing until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/tjc