

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L YOUNG
Claimant

APPEAL NO: 10A-UI-03939-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGE TRANSFORM LTD
Employer

OC: 02/07/10
Claimant: Respondent (1)

Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 9, 2010, reference 02, that held the claimant refused call to non-suitable work on November 1, 2009, and benefits are allowed. A telephone hearing was held on April 27, 2010. The claimant participated. Nancy Cherkas, Vice President, participated for the employer.

ISSUE:

Whether the claimant refused a recall to suitable work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work for the employer on June 11, 2006, and last worked for the employer as a full-time graphic designer on February 9, 2009. The claimant was laid-off for lack of work. After an e-mail communication from the employer to the claimant regarding an insurance check, the claimant had a discussion with VP Cherkas about a job.

The employer offered the claimant a newly created job at the same rate as her previous pay. The claimant understood it would be customer service oriented, and it would not involve graphic design work that is her college degree specialty. The claimant rejected the job offer.

REASONING AND CONCLUSIONS OF LAW:

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 claimant did not refuse a recall to suitable work with the employer on November 1, 2009, and benefits are allowed.

The claimant had a different understanding about the duties of the newly created position that the employer offered to her. The employer did not provide the claimant with a written job description. It is reasonable to assume that if the November job offer focused on graphic design as the claimant had previously worked for the employer, her former job would have been offered rather than some newly created position. The claimant is a graphic design degree person, and she had a good cause for rejecting the job offer that was not based on this work.

DECISION:

The department decision dated March 9, 2010, reference 02 is affirmed. The claimant is not disqualified for refusing a recall to suitable work on November 1, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs