

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

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Appeal Number: 04A-UI-10876-S2T
OC: 09/05/04 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Failure to Accept Suitable Work

STATEMENT OF THE CASE:

Link Staffing Services (employer) appealed a representative's October 4, 2004 decision (reference 03) that concluded Janet Hackbarth (claimant) was eligible to receive unemployment insurance benefits based on her separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2004. The claimant participated personally. The employer was represented by Faith Daniels, Director of Risk Management, and participated by Scott Ball, President and Owner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from May 24 through September 8, 2004. The claimant completed her last assignment on September 8, 2004, and she did seek reassignment from the employer. The employer offered the claimant work the claimant had previously taken. The claimant refused to work on September 9, 2004, because she had some personal appointments scheduled. She refused to work starting September 13, 2004, because she felt the work was physically demanding. The work was the same type of work the claimant had done in the past. The claimant did not have a physician's statement indicating she could not perform the work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. For the following reasons the administrative law judge concludes she was not. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

871 IAC 24.23(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The work offered was work that she had performed before and was capable of performing. The claimant was either unavailable because she asked for time off on September 9, 2004 to attend appointments or she placed restrictions on her employment. The work offered to the claimant was suitable work. The claimant is disqualified from receiving unemployment insurance benefits.

The hearing ended and the record closed at 2:29 p.m. After the record closed but before the administrative law judge disconnected the telephone call, the employer's representative said to the employer's witness either "I'll call you, Scott" or "I'll call you later". The comment was not directed at the administrative law judge. The administrative law judge had no contact with the parties after the close of the hearing on November 4, 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.

The claimant has received benefits in the amount of \$2,007.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The unemployment insurance decision dated October 4, 2004 (reference 03) is reversed. The claimant is not qualified to receive unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$2,007.00.

bas/b