

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOPEZ, ADRIANA, Y
Claimant

APPEAL NO. 10A-UI-17133-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEYSTONE ELECTRICAL MFG CO - LP2
Employer

OC: 11/08/09
Claimant: Appellant (4-R)

Section 96.4(3) – Able & Available

Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 13, 2010, reference 05, decision that denied benefits based on a refusal of recall suitable work on May 15, 2010. After due notice was issued, a hearing was held on January 25, 2011. Claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-17134-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and of records or decisions related to department approved training.

ISSUES:

Whether the claimant has been able to work and available for work since May 15, 2010 or is exempt from such requirements.

Whether the claimant refused recall to suitable employment with Keystone Electrical Manufacturing Company on or about May 15, 2010 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adriana Lopez established a claim for unemployment insurance benefits that was effective November 8, 2009 in response to being laid off from her full-time employment with Keystone Electrical Manufacturing Company effective November 6, 2009. Ms. Lopez received weekly benefits of \$375.00 from November 8, 2009 through the benefit week that ended November 6, 2010. The final week for which benefits were disbursed corresponded to the end of Ms. Lopez's benefit year.

Ms. Lopez established a new "original claim" for benefits that was effective November 7, 2010, but has not received any benefits in connection with the new claim year.

On May 15, 2010, Keystone Electrical Manufacturing Company contacted Ms. Lopez by telephone for the purpose of recalling her to the same full-time employment Ms. Lopez had enjoyed prior to the November 6, 2009 layoff. The employer spoke directly to Ms. Lopez. Ms. Lopez refused the offer of further employment because she had enrolled in and was about to start classes at DMACC. Classes started May 26, 2010. Ms. Lopez continued with her studies at DMACC and remains in full-time studies at this time. On August 4, 2010, a Workforce Development representative entered a reference 02 decision that approved Ms. Lopez for department approved training for the period of May 23, 2010 through December 18, 2010. On January 25, 2011, a Workforce Development representative entered a reference 03 decision that approved Ms. Lopez for department approved training for the period of December 12, 2010 through May 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause at a time when the claimant has an active claim for unemployment insurance benefits is disqualified for benefits until the claimant earns 10 times her weekly benefit amount from insured work. See Iowa Code § 96.5(3)(a).

Iowa Administrative Code rule 871 IAC 24.24(4) states as follows:

Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work ... such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code § 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(2) provides:

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.

(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 weight of the evidence establishes that Ms. Lopez was not available for work on May 15, 2010, when the employer contacted her and made a bona fide offer of suitable full-time work. Ms. Lopez refused the offer of suitable work solely because she had enrolled in and was waiting to start classes at DMACC on May 26, 2010. At that time, Ms. Lopez had not yet been approved for department approved training and was still required to be available for full-time work and work referrals in order to remain eligible for unemployment insurance benefits. Because Ms. Lopez did not meet the work availability requirements at the time of the recall, her refusal of further employment would not disqualify her for unemployment insurance benefits until she had earned 10 times her weekly benefit amount. Instead, she would be ineligible for benefits for any week in which she did not meet the work availability requirements or for which she was not exempted from those requirements. Ms. Lopez did not meet the work availability requirements during for the benefit weeks that ended May 15 and 22, 2010 and was not eligible for benefits for those weeks. This matter will be remanded to address the overpayment of benefits for those two weeks.

During the period when Ms. Lopez was approved for department approved training, she was not required to be available for work so long as she was making sufficient progress in her approved training. Thus, effective May 23, 2010, the start date of the approved training, Ms. Lopez was eligible for benefits, provided she met all other eligibility requirements.

DECISION:

The Agency representative's December 13, 2010, reference 05, is modified as follows. The claimant's refusal of suitable work on May 15, 2010 did not disqualify her for benefits. The claimant was not available for work during the weeks that ended May 15 and May 22, 2010 and the claimant was not eligible for benefits for those weeks. Effective May 23, 2010, the claimant was approved for department approved training, was exempt from the work availability requirements so long as she made appropriate academic progress, and was eligible for benefits, provided she was otherwise eligible.

This matter is remanded for entry of an overpayment decision concerning the benefits the claimant received for the weeks ending May 15, 2010 and May 22, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs