

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYLE A MILLER
Claimant

APPEAL NO. 11A-UI-02584-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAGGONER SOLUTIONS CO
Employer

**OC: 02/14/10
Claimant: Respondent (4)**

Section 96.5-3—Refusal of Work
Section 96.5-1-a – Voluntary Quit/Other employment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 25, 2011, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 23, 2011. Claimant failed to respond to the hearing notice. The employer participated by Kevin Waggoner and Kelly Baum.

ISSUE:

The issue in this matter is whether claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed from October 12, 2010 through January 26, 2011 as a full time lab technician earning \$20.00 per hour. She wanted to work more hours so the employer attempted to contact her by cell phone and text message for two weeks in January 2011 to offer her overtime on weekends but never made contact with her. The claimant then gave a two-week notice that she was quitting to take employment with Hennigan's, an automotive plant.

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.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The record does not establish that an offer of work was actually made. Therefore, there is no basis to apply the provisions of Iowa Code section 96.5-3. However, the record shows that claimant quit for other employment. Benefits are allowed under Iowa Code section 96.5-1-a and shall not be charged to any employer's account.

DECISION:

The decision of the representative dated February 25, 2011, reference 04, is modified favorably to the appellant. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. Pursuant to Iowa Code section 96.5-1-a the employer's account will not be charged.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/css