

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L MILDENSTEIN
Claimant

APPEAL NO. 10A-UI-17305-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN HEALTH SERVICES
Employer

OC: 11/07/10
Claimant: Respondent (2-R)

Section 96.5-3-a – Refusal of Suitable Work
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated December 7, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 10, 2011. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Tracy Meyer, business manager.

ISSUE:

The issue is whether the evidence in the record establishes that Ms. Mildenstein refused to accept an offer of suitable work from her former employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Amanda Mildenstein was employed by Martin Health Services until October 4, 2010, when she was separated for failure to obtain the proper licensing to continue in her job position as a full-time pharmacy technician. The claimant was paid at the rate of \$9.50 per hour.

On November 10, Martin Health Services offered the claimant the full-time position as pharmacy driver, offering full-time work at the same rate of pay. Ms. Mildenstein declined the offer without providing a reason.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant refused to accept an offer of suitable work. It does.

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

- a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.
- b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

- a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the

individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The evidence in the record establishes that Martin Health Services made a bona fide offer of employment to Amanda Mildenstein and that the claimant rejected the offer. The further employment offered by the employer was reasonably suitable and comparable to the work she had previously performed for the employer. The offer of employment was also within the general purview of the claimant's usual occupation. The evidence further establishes that the wages, hours, and other conditions of the offer of work would not have been substantially less favorable to the claimant than conditions prevailing for similar work in the locality. The rate of pay offered to the claimant was the same rate of pay that she had previously received from this employer as a pharmacy technician. The job offered provided wages of at least 100 percent of the claimant's weekly wage in her previous position.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant refused an offer of suitable work from Martin Health Services. The claimant is disqualified for benefits until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to Amanda Mildenstein.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated December 7, 2010, reference 02, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw