

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

PATRICIA L WIESZCIECINSKI
PO BOX 164
CLINTON IA 52733

L A LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265

Appeal Number: 05A-UI-04534-DW
OC: 12/19/04 R: 04
Claimant: Appellant (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 Work

STATEMENT OF THE CASE:

Patricia L. Wieszcieski (claimant) appealed a representative's April 20, 2005 decision (reference 02) that disqualified her from receiving benefits because she refused an offer of suitable work on March 23, 2005, that Sedona Staffing (employer) made to her. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Davenport, Iowa, on August 16, 2005. The claimant appeared for the hearing. Colleen McGuinty, Lorie Susie and Kelly Ziemet appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibit A were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work the week of March 20, 2005?

Did the claimant refuse an offer of suitable work during the week of March 20, 2005?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 19, 2004. The claimant registered to work for the employer on February 24, 2005. The employer assigned the claimant to a job located in Clinton, Iowa, at Molded Fiber Industries. The claimant worked at this assignment until the morning of March 23, 2005. The claimant worked third shift and completed the shift that began the evening of March 22 and ended the morning of March 23, 2005. The claimant earned \$7.00 an hour at this job. The claimant does not have a vehicle and either rode to work with someone else or took a taxi or bus to work.

On Friday, March 18, 2005, claimant informed the employer she had filed a harassment complaint against a manager at Molded Fiber Industries. The employer told the claimant not work her shift the evening of March 18, 2005. On March 18 or 23, the employer told the claimant about a job at G.I. Plastek for first shift that paid \$8.50 an hour. Since there was the possibility of the claimant continuing to work at Molded Fiber Industries on first shift, the claimant indicated she wanted to continue working at Molded Fiber Industries.

The claimant returned to work her shift at Molded Fiber Industries the evening of March 21. The claimant worked her March 22/23 shift. After the claimant finished her last shift, the employer contacted her on March 23 to let her know she would no longer be working third shift at Molded Fiber Industries. The claimant told Susie and Ziemant on March 23 she was not interested in working at G. I. Plastek. (Employer Exhibit 2.)

G.I. Plastek is located in DeWitt or about 19 miles from the claimant's residence in Clinton. The claimant did not have a vehicle and did not have a way to get to DeWitt to work. The claimant needed a local job in Clinton.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she refuses an offer of suitable work without good cause. Iowa Code §96.5-3-a. The claimant acknowledged the employer offered her a job at G.I. Plastek on March 18, 2005, when the claimant talked to the employer about the harassment complaint she had filed against a manager at Molded Fiber Industries. As of March 18, the claimant did not know if she would continue working third shift or if she could work first shift at Molded Fiber Industries. The law does not require an offer of work to be made only when a claimant is unemployed. Instead, the law provides that both the offer of work and the claimant's accompanying refusal must occur within the claimant's benefit year before a disqualification can be imposed. It is not necessary that the offer, or the refusal occur in a week in which the claimant filed a weekly claim. 871 IAC 24.24(8).

The claimant established her claim during the week of December 19, 2004. The facts establish the employer may have initially offered the claimant work at G.I. Plastek on March 18 and later declined it on March 23, 2005.

A preponderance of the evidence establishes the claimant wanted to keep working at Molded Fiber Industries, but on a different shift. The claimant hoped there would be an opening on first shift for her at Molded Fiber Industries. It was not unreasonable for the claimant to initially decline work at G.I. Plastek when there was the remote possibility the claimant could continue to work at Molded Fiber Industries.

On March 23, the employer learned there were no first shift jobs available at Molded Fiber Industries. Finally, around 4:50 p.m. on March 23, the claimant informed the employer she was not interested in the G.I. Plastek job because she did not have a vehicle to get to DeWitt where G.I. Plastek was located, which was about 19 miles one way from the claimant's residence. The claimant needed a job locally so she could take a bus or taxi to work.

Even though the claimant did not have a vehicle since March 17, her inability to get to work 19 miles from her residence does not make her unavailable for work. Instead, given that she had just learned she could no longer work at Molded Fiber Industries the claimant had good cause to decline the offer of work in DeWitt at G.I. Plastek on March 23, 2005. Therefore, as of March 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

Since the employer is not one of the claimant's base period employers, the employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's April 20, 2005 decision (reference 02) is reversed. The claimant refused an offer of suitable work for good cause on March 23, 2005. Therefore, as of March 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

dlw/tjc