

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

KRISTA J STUDER
3425 LOWER W BRANCH RD
IOWA CITY IA 52245

ULTRA STORES INC
122 S MICHIGAN AVE #800
CHICAGO IL 60603

Appeal Number: 04A-UI-04685-H2T
OC 01-18-04 R 03
Claimant: Respondent (1)

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 – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 19, 2004, reference 05, decision that allowed benefits. After due notice was issued, a hearing was held on May 18, 2004. The claimant did participate. The employer did participate through Katie McKay, District Manager (representative) and Nina Henrichs, Human Resources Coordinator.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer made an offer of work to the claimant on March 19, 2004. That offer included the following terms: work as sales associate for \$8.50 per hour with a 5 percent commission, working 32 to 40 hours per week. The claimant was later offered \$9.00 per hour. The claimant

was never offered \$10.00 per hour. The fact-finding notes indicate that Ms. McKay told the fact-finder that the job was offered at \$8.50 per hour. The claimant's average weekly wage is \$492.09. The offer was made in the tenth week of unemployment. The claimant was not obligated to accept the offer, as the wage was too low for her tenth week of unemployment. The claimant refused the offer because she had accepted another offer of employment and because the money offered by Ultra Stores was too low.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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.

The offer made by Ultra was too low for the claimant's tenth week of unemployment, considering her average weekly wage. Additionally it is found that Ms. McKay did not offer the claimant \$10.00 per hour as she told the fact-finder that the offer was \$8.50 per hour. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 19, 2004, reference 05, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/s