

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

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NSK CORPORATION  
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ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01526-SWT  
OC 11/02/03 R 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 5, 2004, reference 03, that concluded the claimant was not subject to disqualification for refusing work. A telephone hearing was held on March 4, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Judy O'Grady participated in the hearing on behalf of the employer with a witness, Linda Swanson.

FINDINGS OF FACT:

The claimant worked full time for the employer from July 7, 1997, to September 19, 2003, as a machine operator when she was laid off due to lack of work. She was subject to recall for one year. Her last job paid the claimant \$15.88 per hour.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 2, 2003. Her average weekly wage during the highest quarter of earning in her base period was \$766.84.

The claimant was sent a letter by certified mail on December 22, 2003, recalling her back to work after unsuccessful attempts to contact her by phone. The letter ended up being returned undelivered after two attempts to deliver it on December 23 and 29, 2003.

The claimant was being offered an assembly job on the second shift that would have paid the claimant \$10.00 per hour for 40 hours of work per week.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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 of work in this case was made eleven weeks after the claimant filed her new claim for benefits on November 2, 2003, Therefore, the claimant is not subject to disqualification because the wage offered for the assembly job was not equal to 76 percent of \$766.84, her average weekly wage in her highest quarter of wages in her base period. The case law makes it clear that it does not matter what the reason for the refusal is, a claimant is not subject to disqualification if the work offered does not meet the wage requirements of the law. Biltmore Enterprises, Inc., v Iowa Department of Job Service, 334 N.W.2d 284 (Iowa 1983).

DECISION:

The unemployment insurance decision dated February 5, 2004, reference 03, is affirmed. The claimant is not subject to disqualification for refusing suitable work.

saw/s