

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

ROBERTA A WHEELER
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DAVENPORT IA 52806

OLSTEN STAFFING SERVICES CORP
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-00506-DWT
OC: 11/20/05 R: 04
Claimant: Respondent (4)

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 96.4-3 – Ability to and Availability for Work
Section 96.5-3-a – Refusal of Offer of Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Olsten Staffing Services Corporation (employer) appealed a representative's January 5, 2006 decision (reference 05) that concluded Roberta A. Wheeler (claimant) was still eligible to receive unemployment insurance benefits even though she declined an offer of work from the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2006. The claimant participated in the hearing. Doretha Washington, a representative with TALX, appeared on the employer's behalf. Barb Asefi and Lisa Jordan testified on the employer's behalf. 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 as of December 9, 2005?

Did the claimant decline an offer of suitable work?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of November 20, 2005. After the claimant's September 2004 injury, her doctor released her to work with some permanent restrictions in April 2005. Since her release, the claimant has worked part-time in an office with these restrictions. In October 2005, the claimant went back to school and continued working part-time. When the claimant established her claim for benefits during the week of November 20, the claimant was still looking for part-time work.

On December 9, 2005, the employer offered the claimant a job with flexible hours that paid \$7.00 an hour. The claimant declined the job because the pay was too low. The minimum hourly wage the claimant would accept was \$8.00. The claimant then informed the employer she was not available to work until February 2006, because she had school finals, she did not know what her school schedule would be in 2006, and she had problems with her vision.

The claimant did not get her vision corrected until she received new glasses on February 3, 2006. Based on her base period wages, the claimant's average hourly wage is \$8.88.

The claimant filed claims for the weeks ending December 17, 2005, through January 28, 2006. She received a total of \$1,392.15 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. 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. Before a disqualification can be imposed under Iowa Code § 96.5-3-a, a claimant must be able to and available for work. 871 IAC 24.24(4).

The facts establish that as of December 9, the claimant was not available to work. Even though during the hearing the claimant asserted she was available, the claimant's statement in December that she was not available until February because of her school finals, her school schedule had not been determined for the next semester, and the claimant could not see well enough to read, do computer work or drive safely, is more credible than claimant's testimony. As of February 5, 2006, the claimant is able to and available for work.

If the claimant had been available for work, she refused the employer's offer of work with good cause, because the job did not pay her 100 percent of her average hourly wage of \$8.88 per hour. Iowa Code § 96.5-3-a.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the

overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending December 17, 2005, through January 28, 2006. The claimant has been overpaid \$1,392.15 in benefits she received for these weeks.

DECISION:

The representative's January 5, 2006 decision (reference 05) is modified in the employer's favor. The claimant declined an offer of work that was not suitable for her. However, the claimant was not available to work December 9, 2005 through February 3, 2006. Therefore, the claimant is not eligible to receive benefits from December 11, 2005 through February 4, 2006. The claimant has been overpaid and must repay a total of \$1,392.15 in benefits she received for these weeks.

dlw/kjw