IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER L LENEHAN
Claimant

NESTLE USA INC
Employer

APPEAL NO. 09A-UI-16345-H2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 09-27-09
Claimant: Appellant (1)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 23, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on January 13, 2010. The claimant did participate. The employer did participate through Ashley Grzetic, Paul Wingert, and (representative) Karen Reicks. Claimant's Exhibit A was received. Employer's Exhibit One was received.

ISSUE:

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a packaging operator can line, full-time, beginning January 5, 2009, through October 31, 2009, when she voluntarily quit.

In March and April 2009 the claimant complained about how two of her coworkers, Dennis Eick and Jim Sherwood, were treating her. The employer investigated the claimant's complaints and did take actions against Dennis Eick when they discovered that in March he had thrown a tool that had inadvertently hit her in the back of the leg. Dennis apologized to the claimant the same day the event occurred and told her he had not intended to hit her with the tool. Every single time the claimant made a complaint to the employer about any discrimination or poor treatment, the employer always investigated and took action when it was necessary. The claimant's complaint in April involved another employee who she felt would not sit next to her at break in the break room.

In September 2009 the claimant complained to Paul Wingert that the break schedule was unfair and needed to be addressed. In order to address the order that employees took breaks, Mr. Wingert called a meeting that was attended by him, the claimant, and Clare, as well as other employees. The meeting was to address the claimant's complaints and concerns about the break schedule. At the meeting, it was agreed which employee would take their break and

when. At the end of the meeting, the claimant was upset and crying. Mr. Wingert told her she could stay in the conference room to pull herself together before returning to work. Mr. Wingert specifically told the claimant not to leave work before she spoke to him. The claimant left the conference room and then left the plant without notifying Mr. Wingert that she was leaving or without obtaining his permission to leave. When the claimant got to the guard shack, one of the security personnel called Mr. Wingert and told him that the claimant was leaving. The claimant did not speak to Mr. Wingert personally from the guard shack. The claimant did not follow Mr. Wingert's instructions about leaving the plant without permission.

The claimant was suspended on September 27 for failing to follow Mr. Wingert's explicit instructions and for leaving the plant without permission. She was due to return to work on October 15 from her two-week suspension. During a statement the claimant gave to Ashley Grzetic on September 27, she admitted that at the September 25 meeting Mr. Wingert had specifically told her not to leave the plant without speaking to him. The claimant also admitted that she knew she was not to leave the plant without speaking to Mr. Wingert or without first obtaining permission to leave.

The claimant did not return to work after her two-week suspension ended on October 15. She notified the employer that she was not medically able to return to work. After that, the employer requested on numerous occasions that the claimant provide medical documentation from a treating physician that would justify her not returning to work. The claimant never provided any medical documentation to support her allegation that she was unable to return to work on October 15. No physician or medical provider determined that the claimant was unable to work on October 15 or from that point forward.

On October 15 the claimant spoke by telephone to Ms. Grzetic and told her that she thought she was being discriminated against. By letter dated October 19, Ms. Grzetic asked the claimant to provide any additional information the claimant had about any specific instances of discrimination and they would be investigated by the employer. Ms. Grzetic specifically reminded the claimant that each time she had made any kind of complaint of harassment or discrimination, her allegation had been thoroughly investigated by the employer. The complaints the claimant made months earlier in March had already been investigated and resolved and as the claimant provided no new information regarding prior instances, no additional investigation was conducted. The claimant never provided the employer with any additional information about any instances of harassment or discrimination. The claimant notified the employer that she wanted them to meet with her and her attorney to discuss the work situation. By letter dated October 27, the employer refused to meet with the claimant and her attorney, but did offer to meet with her and her union representative and human resources representatives to discuss any issues the claimant had about the workplace. The claimant did not schedule the meeting. In the same letter, the employer again reminded the claimant that she had not provided any supporting medical documentation to allow her to be medically absent from work beginning October 15, 2009.

On October 30 the claimant notified the employer that she was voluntarily quitting her employment and would not be returning to work. Continued work was available for the claimant if she had not quit.

The claimant filed a claim for benefits with an effective date of September 29, 2009. She was offered a return to work after her suspension on October 15, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work.

Iowa Code § 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.
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> 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:
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> (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
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> (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
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> (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.
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> However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The offer was suitable, as it was a return to the same job the claimant had at the same hours and wages as prior to her disciplinary suspension. The claimant has not established a hotilie or intolerable work environment that would give rise to a good-cause reason for her refusal to return to work. The claimant did not have a good-cause reason for the refusal. Benefits are denied.

DECISION:

The October 23, 2009, reference 04, decision is affirmed. Claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw