

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA J KRIEGER  
1120 CORSE ST  
BURLINGTON IA 52601**

**APPEAL NO. 09A-UI-19616-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCED HOME HEALTH CARE LTD  
1525 MT PLEASANT ST  
BURLINGTON IA 52601**

**APPEAL RIGHTS:**

**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:

***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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**TOBY J GORDON  
ATTORNEY AT LAW  
PO BOX 517  
BURLINGTON IA 52601**

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA J KRIEGER**  
Claimant

**APPEAL NO. 09A-UI-19616-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCED HOME HEALTH CARE LTD**  
Employer

**OC: 11/22/09**  
**Claimant: Appellant (4)**

Section 96.4-3 - Able to and Available for Work  
Section 96.5-3-a - Failure to Accept Suitable Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 21, 2009, reference 01, that concluded she was not able to work. A telephone hearing was held on February 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Toby Gordon, and a witness, Bret Krieger. Barb Nelson participated in the hearing on behalf of the employer with a witness, Debra Nafziger. Exhibits One and A were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant able to and available for work?  
Did the claimant fail to accept an offer of suitable work without good cause?

**FINDINGS OF FACT:**

The claimant worked for the employer as a Licensed Practical Nurse from June 2008 through September 2, 2009. She was providing care to a pediatric client. After September 2, 2009, she was off work because she injured her knee at home, which required surgery on September 9, 2009. Under the employer's work rules, employees are assured of employment after a leave of absence but with no guarantee that they will have the same position.

The claimant was on leave while she recuperated from her knee surgery. On October 13, 2009, she received a doctor's statement that she could return to work on November 9, 2009. In early November 2009, she provided this statement to the employer. Since the claimant stated she was still having problems with pain in her knee, the claimant's supervisor, Debra Nafziger, suggested she get another opinion about her ability to work.

The claimant went to the doctor on November 12, 2009, and the doctor provided the claimant with a work release on November 16 stating that she could return to work without activity restrictions on November 18 as long as she wore a leg brace. When she turned this note in to Nafziger, Nafziger decided the claimant would not be able to work on the pediatric assignment because of the brace. The employer had no further assignments for her at that time.

The claimant filed a new claim for unemployment insurance benefits effective November 22, 2009. At the time she applied for benefits, she had been released by a doctor to return to work without activity restrictions. The brace was off her leg in early December. The brace would not have prevented the claimant from performing her work.

In January 2010, the employer again requested a doctor's statement. She submitted a release on January 14, 2010, from her doctor stating she was released without restrictions.

On January 19, 2010, the claimant was offered a position providing adult home health care in West Point, Iowa, about 24 miles away. This was outside the distance the claimant stated she was available for when she was hired so she declined the position.

On January 27, the claimant was offered a position providing adult home health care in Burlington, which is where she resides. The job would have involved the same number of hours (24-32 hours) and same rate of pay (\$15.75) as she had previously worked. She declined the offer indicating she only wanted pediatric work.

The claimant stopped filing weekly claim for benefits after January 23, 2010, because she did not think she could draw after refusing a job.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b.

When the claimant applied for unemployment insurance benefits, she had been released by her doctor without activity restrictions but was to wear a leg brace for support. The employer decided for its own reasons that the medical release was not enough to allow the claimant to return to work, but I conclude the preponderance of the evidence establishes the claimant meets the physical ability to work standards of the law.

The next 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....

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.

I conclude the offer of work made on January 19, 2010, was outside the distance the claimant stated she was available for when she was hired, and therefore would not be considered suitable work under Iowa Code section 96.5-3-a

I conclude the offer of work made on January 27, 2010, was suitable work that the claimant did not have good cause to refuse. It offered the same number of hours and same rate of pay and met the gross wage formula for suitable work found in Iowa Code section 96.5-3-a(2) since it was offered after the claimant's nine weeks of unemployment. The claimant was employed by a home health care company providing care to adults and children and was never guaranteed that she would only work with children. Benefits are denied effective January 24, 2010.

**DECISION:**

The unemployment insurance decision dated December 21, 2009, reference 01, is modified in favor of the claimant. The claimant is qualified for benefits from November 22, 2009, through January 23, 2010. The claimant is disqualified from receiving unemployment insurance benefits effective January 24, 2010, until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs