

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A WALKER
Claimant

APPEAL NO. 10A-EUCU-00235-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**Original Claim: 05/31/09
Claimant: Appellant (2)**

Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 25, 2010, reference 03, that held she refused a recall to suitable work on July 13, 2009, and that denied benefits. A telephone hearing was held on May 13, 2010. The claimant and her daughter, Lavette Jackson, participated. Colleen McGuinty, Unemployment Benefits Administrator; Lakendra Stafford, Manager; and Sammy Teel, Manager, participated for the employer.

Layette Jackson was barred from the hearing do to a failure to follow the hearing participation instructions and unruly conduct.

ISSUE:

Whether the claimant refused a recall to suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time bindery worker on assignment at Fidler Printing Company from July 3, 2008 to October 29, 2008. The employer protested the claimant's separation from employment, and the claimant was disqualified. An administrative law judge reversed the disqualification and allowed claimant benefits based on a separation from employment in October 2009 (February 15, 2010 decision in Appeal No. 09A-EUCU-00539-SWT). The decision was not appealed to the Employment Appeal Board.

Manager Stafford called the claimant on July 10, 2009 with a message about a work assignment. The claimant called back and spoke with Manager Teel. Teel offered the claimant the same job she had worked at Fidler Printing Company at \$0.50 less an hour (\$8/\$7.50). The claimant accepted the assignment with an employer direction she report to work on July 13.

When the claimant failed to report for work on July 13, Stafford called to inquire. The claimant replied she had just got home from taking Bobby Walker to the hospital. The claimant was

removed from the assignment and she was advised to come in and sign a disciplinary statement for being a no-call/no-show to work. The claimant did not come in and sign the discipline until February 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the claimant had a good cause for her refusal to a recall to suitable work with the employer on July 13, 2009.

The employer's discipline was not a discharge for failing to report on assignment, but a written warning. A reasonable inference is that the employer accepted the claimant's explanation for

being a no-call, no-show to work on July 13 or she would have been terminated. The claimant denied the offer of work in this hearing, but the employer's testimony based on its record is more credible. The employer chose not to question the claimant about taking Bobby Walker to the hospital or requiring some medical verification, so it must accept this as a good-cause excuse for refusing to report on assignment.

DECISION:

The department decision dated March 25, 2010, reference 03, is reversed. The claimant is not disqualified July 13, 2009 for refusing a recall to suitable work, as she had a good cause for failing to report. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw