

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICE L CAMPBELL

Claimant

APPEAL NO. 08A-UI-05276-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TABOR MANOR CARE CENTER INC

Employer

**OC: 04/27/08 R: 01
Claimant: Respondent (2)**

Section 96.5-3-a – Refusal to Accept Suitable Work

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Tabor Manor Care Center (employer) appealed a representative's May 28, 2008 decision (reference 02) that concluded Alice Campbell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 17, 2008. The claimant participated personally. The employer participated by Mitchell Worcester, Administrator. The employer offered and Exhibit One and Two were received into evidence.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 18, 1997, as a part-time certified medication aide. Between January 1 and April 15, 2008, she worked an average of 15 hours per week. The claimant preferred to work the overnight shift and not two nights in a row. The overnight shift was staffed with three aides and one nurse.

The employer experienced low census starting on or about April 10, 2008. It reduced the staff on the overnight shift to two aides and one nurse. The employer offered the claimant work on the 6:00 a.m. to 2:00 p.m. or the 2:00 p.m. to 10:00 p.m. shifts. Those shifts were staffed with five aides and two nurses. The claimant declined the offer of work because she suspected the pace was quicker during the days, she did not know if she could keep up due to her age and she was used to working overnight. From April 16 through May 15, 2008, the claimant worked approximately four hours per week. The claimant's regular number of hours is available if she worked a different shift. The employer would accommodate a slower pace from the claimant.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 27, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not able and available for work. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions

The work that was offered was in the same location, the same type of work and for the same wages. The claimant refused the work because she preferred to work the overnight shift. There was no medical necessity for her to work that shift. In addition, the claimant refused to work two nights in a row. The work offered to the claimant was suitable work but the claimant put too many restrictions on her employment. The claimant is disqualified from receiving unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's May 28, 2008 decision (reference 02) is reversed. The work offered to the claimant was suitable work but the claimant put too many restrictions on her employment. She was not available to work. The claimant is disqualified from receiving unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$117.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css