

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MYLAN K NGUYEN
Claimant

APPEAL NO. 09A-UI-03257-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
PALMER CONSULTING
Employer

OC: 01/04/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Mylan Nguyen (claimant) appealed a representative's February 25, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she refused suitable work with Palmer Consulting (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 25, 2009. The claimant participated personally. The employer participated by Megan Culver, Staffing Consultant, and Tammy Sanders, Director of Staffing.

ISSUE:

The issue is whether the claimant refused 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 employer is a temporary agency. The claimant completed her last assignment on January 2, 2009. The claimant filed a claim for unemployment insurance benefits with an effective date of January 4, 2009. The claimant's highest quarter of wages during her base period was the second quarter of 2008, during which her wages totaled \$7,713.00. The claimant's average weekly wage during her highest quarter of wages was, therefore, \$593.38.

On January 5, 2009 the employer offered the claimant a full-time job earning \$13.00 per hour for forty hours of work or \$520.00 per week. The claimant refused the offer of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not offered suitable work during her first five weeks of unemployment.

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 work was offered within five weeks of the claimant's unemployment and was required to provide the claimant wages 100 percent of those paid to the claimant during the highest quarter of her base period. The evidence fails to establish that the claimant would have received at least 100 percent of her average weekly wages during her highest quarter of earnings. Based on the factors found in Iowa Code section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's February 25, 2009 decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css