

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L TYLER
Claimant

APPEAL NO. 09A-UI-08206-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHERS TRUCKING INC
Employer

OC: 11/23/08
Claimant: Appellant (4)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 2, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on June 23, 2009. Claimant participated personally. Employer participated by Paula Houston and Scott Richers.

ISSUE:

The issue in this matter is whether claimant refused to accept a suitable offer of work and was the claimant able and available.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was an over-the-road team driver. Her team member quit driving teams and the claimant was not able to drive. The employer called the claimant on Friday, May 1, letting her know she could team up with another driver on Saturday, May 2, 2009. The claimant was attending her daughter who had a medical emergency and was not available on May 2 with short notice. The claimant's mother was also hospitalized the first week of May and was not released from intensive care until May 7, 2009. The employer made no other offers of employment to the claimant after the May 1, 2009 offer.

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.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work on May 1, 2009. She had valid reasons for not accepting the offer. The short notice, less than 24 hours, and her daughter's medical condition were valid reasons for not accepting the offer on that day. The employer made no more offers to the claimant. The claimant was with her mother every day when she was in intensive care. The claimant was not available for work the week of May 3 through May 9, 2009. She was attending her mother in the hospital and was not available in the labor market.

DECISION:

The decision of the representative dated June 2, 2009, reference 02, is modified. The claimant was not available the week of May 3 through May 9, 2009. Claimant is eligible to receive unemployment insurance benefits, other than the one week mentioned in the preceding sentence, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css