

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAGGIE L MARTENS
Claimant

APPEAL NO. 10A-UI-12846-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JALAS ENTERPRISES INC
Employer

OC: 08/15/10
Claimant: Respondent (2-R)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Jalas Enterprises, filed an appeal from a decision dated September 9, 2010, reference 03. The decision allowed benefits to the claimant, Maggie Martens. After due notice was issued, a hearing was held by telephone conference call on November 1, 2010. The claimant participated on her own behalf. The employer participated by President Jeremy Jalas.

ISSUE:

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

FINDINGS OF FACT:

The claimant was discharged from this employment on August 12, 2010, for allegedly allowing food to leave the counter without being paid for. When she told the employer the food had been paid for, the president examined the surveillance video further and confirmed her story. Owner Jeremy Jalas admitted his mistake, apologized on August 19, 2010, and offered her her job back at the same hours, wages and duties as before. She declined because she felt she had been “disrespected” and did not want to continue working there.

Maggie Martens has received unemployment benefits since filing a claim with an effective date of August 15, 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 claimant declined the offer to return to her job because she felt she had been "disrespected" by the employer. The administrative law judge does not find any evidence of "disrespect" on behalf of the employer. Mr. Jalas took the claimant's claim of innocence seriously and investigated. He admitted he was wrong, and apologized to her personally. This is not disrespect but a fair and responsible thing to have done. He did not have to offer her the job back even with the apology but did so. The record does not establish the claimant had any good cause for refusing the job offer. Under the provisions of the above Code section, the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 9, 2010, reference 03, is reversed. Maggie Martens is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css