

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN E NEAL
Claimant

APPEAL NO. 11A-UI-15241-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND DERMATOLOGY &
SKIN CANCER CENTER PC**
Employer

OC: 10/23/11
Claimant: Respondent (1)

Section 96.5-3-a – Acceptance of Suitable Work

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated November 22, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on December 21, 2011. Claimant participated personally. Participating as a witness for the claimant was Dr. W. Dale Franks. The employer participated by Ms. Janet Hill, Office Administrator; Ms. Kathey Stairs, Billing Department Employee; and Ms. Krystal Whistler, Front Desk Employee.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Erin Neal was employed by Heartland Dermatology & Skin Cancer Center, P.C. from May 18, 2010 until being separated from employment in October 2011. Ms. Neal initially was employed on a full-time basis as a registered nurse. Claimant performed services as a nurse for Dr. W. Dale Franks in the employer's professional offices.

Ms. Neal declined an offer of working two hours per day that was made to her after Dr. Franks was separated from the practice. The claimant considered the offer to be a substantial change in her previous full-time employment and substantial reduction in pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not refuse a suitable offer of work.

Iowa Code § 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(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The offer was unsuitable as it did not meet the minimum wage requirement set out above for the offer to be considered suitable. Claimant's benefit history establishes that Ms. Neal had been employed full time. The offer of two hours per day reducing the claimant to part-time status was not suitable.

DECISION:

The November 22, 2011, reference 01, decision is affirmed. Claimant did not refuse an offer of suitable work. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs