

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMERA D SEWELL**  
Claimant

**APPEAL NO. 09A-UI-17140-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**Original Claim: 07/05/09  
Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal

**STATEMENT OF THE CASE:**

Temp Associates (employer) appealed a representative's November 3, 2009 decision (reference 02) that concluded Tamera D. Sewell (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 18, 2009. The claimant participated in the hearing. Jan Windsor appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant began taking assignments with the employer on April 30, 2008. Her final assignment began on June 15, 2009. Her last day on the assignment was July 3, 2009. The assignment ended because she was laid off from the business client at that time. All of the claimant's assignments had been with the same business client working as a packer. Her ending rate of pay was \$10.50 per hour.

On or about September 4, the employer contacted the claimant to inquire as to whether she was willing to return to the business client as of September 13 for some additional work at the same pay rate and schedule as she had previously worked, working a schedule of 36 hours one week and 48 hours the next week, plus additional voluntary overtime. The claimant indicated that she would let the employer know by September 8.

Since the July 3 layoff, the claimant had obtained other part-time employment for which her hours had been increasing; she worked 33.5 hours for that employer during the week ending September 5. Additionally, she applied for a different full-time position with another employer. On September 8 she received an offer of employment from that other employer. The claimant returned the call to the employer on September 8 and inquired what the potential was for the assignment with the business client to be long term; the employer's representative responded that it was only guaranteed to be two weeks, but it was possible that it could be for an extended time. Since the employer could not assure the claimant that the work would be for an extended time and she had the other offer of full-time employment pending, she told the employer that she was passing on the option to return to work with the business client. During the week ending September 12, she worked 26 hours with her intervening part-time employer, and then worked an additional eight hours doing an orientation program for the new full-time employer.

The claimant had established an unemployment insurance benefit year effective July 5, 2009. Based upon the wages paid by the employer during the high quarter of her base period, the claimant's average weekly wage was determined to be \$550.76. The claimant ceased filing weekly claims after September 12 but for a claim filed the week ending November 28 when her new employer did not have full-time hours available for her.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant refused a suitable offer of work without good cause. Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if she has failed without good cause to accept suitable work when offered.

The claimant did refuse an offer of work during the tenth week since she established her claim for unemployment insurance benefits. The representative's decision was based on a conclusion that the offer was not suitable because the rate of pay offered, \$10.50, times 38 (the hours the claims representative understood would be the weekly schedule), equaled only \$399.00, which is not at least 75 percent of \$550.76. The statute provides:

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:

...

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

Here, given the scheduled overtime every other week, it is not clear that the average weekly pay would not have been at least \$413.07, which is 75 percent of \$550.76.

The better analysis appears to be to look at the actual reason the claimant declined the offer, because she had an offer of full-time employment elsewhere and the position offered by the employer was not certain to be more long-term than the full-time offer. Declining one offer of work because of or in order to accept another offer of work is good cause for declining the one offer. 871 IAC 24.24(7). Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's November 3, 2009 decision (reference 02) is affirmed. The claimant did not refuse a suitable offer of work without good cause. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw