

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JANE A LEIB
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NORWALK COMMUNITY
SCHOOL DISTRICT
c/o TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00335-SWT
OC 12/22/02 R 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 6, 2004, reference 02, that concluded the claimant was not subject to disqualification for refusing work. A telephone hearing was held on February 2, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Kate Baldwin participated in the hearing on behalf of the employer with witnesses, Dale Barnhill and Ann Laing.

FINDINGS OF FACT:

The claimant worked for the employer as a teaching associate from August 26, 2003 to November 26, 2003. She was then laid off due to lack of work because the special needs student the claimant was assisting no longer needed her services. The claimant contacted the employer about exercising seniority rights to bump a less senior employee pursuant to the employer's union contract, but ultimately decided that she did not want to bump because the job

she would have received involved supervising several special-needs high school students in a resource room. The high school principal also mentioned a food services opening to the claimant but did not offer her the job.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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. . . . 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.

The unemployment insurance rules provide that an individual who fails to exercise seniority rights to bump a less senior employee is not disqualified from receiving unemployment insurance benefits for refusing work. 871 IAC 24.24(5).

Based on this rule, the claimant's failure to exercise her right to bump a less senior employee does not disqualify her from receiving benefits for refusing work. Furthermore, the claimant is not disqualified for declining the food service job because no job was actually offered her, which is a requirement for disqualification. 871 IAC 24.24(1).

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated January 6, 2004, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b