

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY J SHADY
Claimant

APPEAL NO: 07A-UI-07565-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 07/01/07 R: 04
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Kimberly J. Shady (claimant) appealed a representative's July 31, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits as a result of an offer of work with L A Leasing, Inc. / Sedona Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2007. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Carri Gilson. 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.

ISSUES:

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

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant most recently had worked an assignment and began taking assignments with the employer from January 10, 2007 through June 1, 2007. She had worked full time on first shift as a general laborer at a Maquoketa, Iowa business client for \$8.01 per hour. The claimant established an unemployment insurance benefit year effective July 1, 2007. Her high quarter average weekly wage was \$318.92; the average hourly wage for the quarter was \$7.93.

On July 10 the employer discussed with the claimant an assignment that would also be on first shift at another Maquoketa, Iowa business client doing general laborer for \$8.00 per hour. The position was scheduled to begin on July 12. It was a long-term and potential temp-to-hire position. On the evening of July 11 the claimant called the employer's office and reported that she would be unable to take the assignment for July 12 because she had accepted other employment. On July 11 she had been offered and had accepted a position with an employer at

the rate of \$9.25 per hour. The job was to begin the next week; the claimant in fact did begin the job on July 19. The claimant therefore determined that it would not make sense to begin a new assignment.

REASONING AND CONCLUSIONS OF LAW:

The claimant would be disqualified from receiving unemployment insurance benefits if she refused a suitable offer of work without good cause.

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(4), (7) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

Because of having obtained other employment that would begin the next week, the claimant had good cause for refusing the employer's job offer.

The remaining issue in this case is whether the claimant was eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Availability is determined on the basis of each week for which the claimant files a continued claim, and is dependent on the claimant's availability for the majority of the normal work week. 871 IAC 24.23. The claimant was available for work with the employer or another employer for the majority of the normal work week ending July 14, 2007. She had, however, effectively removed herself from the labor market for the majority of the week ending July 21 even though she did not begin working her new employer until July 19; for that week at least theoretically she could have been available for additional short-term work through the employer that if given to her would have relieved the employer's account from potential liability for that week. Benefits are allowed for the week ending July 14, but benefits are denied for the week ending July 21, 2007. After July 21, for weeks in which she continued employment with her new employer but there were reduced wages due to plant operation issues, she was temporarily partially unemployed under Iowa Code § 96.19-38(b), and thus also exempt from making herself

available for other work under Iowa Code § 96.4-3. Benefits are therefore also allowed as of July 22, 2007.

DECISION:

The representative's July 31, 2007 decision (reference 01) is modified in favor of the claimant. The claimant did refuse a suitable offer of work but did have good cause, preventing disqualification on that issue. She was able and available for the majority of the week ending July 14, but not for the week ending July 21 2007. The claimant is qualified to receive unemployment insurance benefits for the week ending July 14 and then for other weeks beginning July 22, 2007, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs