

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

MELINDA J SCHLESENER
5463 RIVERVIEW RD
THOMSON IL 61285

EMPLOYER'S SERVICE BUREAU INC
PO BOX 294
CLINTON IA 52732-0294

Appeal Number: 04A-UI-08064-DT
OC: 05/23/04 R: 04
Claimant: Appellant (4)

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 – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Melinda J. Schlesener (claimant) appealed a representative's July 22, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Employer's Service Bureau, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-08065-DT. The claimant participated in the hearing. John Rausenberger appeared on the employer's behalf and presented testimony from one other witness, Rick Gallentine. 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:

Did the claimant refuse 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:

After a prior period of employment with the employer, the claimant started working for the employer on May 17, 2004. She worked full time as a day laborer for the employer's business client. The claimant would be informed on a day-to-day basis either by phone or by a posted list as to whether she was scheduled to work the following workday. The last day she worked was Monday, June 28, 2004. She had arranged not to be scheduled to work on Tuesday, June 29 due to visiting family. She had been scheduled to work on Wednesday, June 30, however, the evening of June 29 she called the employer and reported that her babysitter had quit so she could not work on June 30. Therefore, the employer took her off the list for working on June 30. There was no further communication directly between the claimant and the employer until July 9, and the claimant was not scheduled to work any of the intervening days. The employer had gotten some impression that the claimant was out of state during that time; however, that was not in fact the case. On July 9, Mr. Gallentine, the coordinator, called the claimant and indicated that she was to work on Monday, July 12, and the claimant agreed. However, she did not report for work that day. Again on July 13 Mr. Gallentine called the claimant to offer work for Wednesday, July 14, and again the claimant agreed, but did not report for work. As of July 14, the employer ceased attempting to schedule the claimant for work.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work.

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.

By not reporting for offered work on July 12, 2004 for which the claimant had agreed to work, she did refuse an offer of work. The refusal disqualification would apply from that point, not June 30, 2004. The claimant's actions relating to work for June 30 was not a refusal, but raised an availability issue for that week.

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

Iowa Code Section 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".

Being "available for work" is a week-to-week determination. A person is eligible if they are available for work the majority of the workweek. 871 IAC 24.23(29). The week ending July 3, 2004, the claimant had made herself unavailable for work on June 29 due to visiting family and was unavailable June 30 due to lack of childcare. However, there is no showing that she was in fact unavailable if work had in fact been offered on July 1 or July 2. Therefore, she was "available" for the majority of the workweek. Likewise, for the week ending July 10, 2004, there is no showing she was in fact unavailable if work had in fact been offered. No disqualification is imposed for those weeks.

DECISION:

The representative's July 22, 2004 decision (reference 02) is modified in favor of the claimant. The claimant did not refuse a suitable offer of work on June 30, but rather the refusal was effective July 12, 2004. The claimant was able and available for work through July 10, 2004, and was qualified to receive unemployment insurance benefits through that time. She is disqualified effective the week ending July 17, 2004.

ld/kjf