

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L KEMPF
Claimant

APPEAL NO. 09A-UI-11651-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

OC: 05/10/09
Claimant: Respondent (2-R)

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Lady Luck Casino filed a timely appeal from a representative's decision dated August 5, 2009, reference 02, which found the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 27, 2009. The claimant participated personally. The employer participated by Mr. Mark Witter, Human Resource Manager. Employer's Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant refused a bona fide offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having reviewed the evidence in the record, finds: Tracy Kempf was employed by IOC Services, LLC dba Lady Luck Casino from August 1, 2008 until May 11, 2009 when she was laid off due to lack of work. The claimant held the position of full-time guest service representative working as a cage cashier at the rate of \$9.02 per hour. At the time of separation the claimant was informed that the employer would attempt to recall her to employment as soon as conditions improved.

Lady Luck Casino made repeated efforts to contact Ms. Kempf, however, the telephone number was not accurate or not in service and the claimant could not be reached. The employer, therefore, sent the claimant a certified letter with return signature requested on June 22, 2009 offering the claimant her same job position working the same hours and duties at an increased rate of pay. Although the certified letter was received at the claimant's residence and signed for by a family member, Ms. Kempf did not respond to the offer and subsequently a second letter was sent to the claimant once again offering the claimant the same job position, pay hours and duties.

It is the claimant's position that although the certified letter was received at her residence and signed for, the item was apparently misplaced and therefore she did not respond to the offer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant has refused without a good cause a bona fide offer of suitable work.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 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.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The evidence in the record establishes that Lady Luck Casino made an offer of suitable work to Ms. Kempf on June 22, 2009 and that the employer made the offer by personally contacting the claimant through a registered letter offering the claimant her same job, hours, duties at an increased rate of pay. As the employer had attempted on repeated occasions to contact Ms. Kempf by telephone and had been unable to reach her, the employer had no other reasonable means of informing the claimant of the suitable offer of work and the employer was reasonable in its expectation that the claimant would be aware of the contents of a letter that had been sent registered mail and signed for by an individual who resided at the claimant's address of record.

For these reasons the administrative law judge concludes that the claimant refused a bona fide offer of suitable work. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated August 5, 2009, reference 02, is reversed. The claimant is disqualified until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she meets other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs