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

Appeal Number: **04A-UI-01336-B4T**
OC: 01/04/04   R: 02
Claimant: Appellant (1)

JENNIFER BELLOLIO
948 E 6TH ST
DES MOINES IA 50316

DES STAFFING SERVICES INC
3326 INDIANOLA AVE
DES MOINES IA 50315

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 – Whether Claimant Refused to Accept Suitable Work

STATEMENT OF THE CASE:

An appeal was filed on behalf of DES Staffing Services, Inc., from an unemployment insurance decision dated January 30, 2004, reference 01, that held, in effect, Jennifer C. Bellolio was eligible to receive unemployment insurance benefits provided she met all other eligibility requirements and DES Staffing Services, Inc., may be charged for benefits paid.   An explanation of the decision was that the claimant separated from this employment on July 29, 2003. A decision on the separation was made on a prior claim and that decision remains in effect.

A consolidated telephone conference hearing was scheduled and held on February 20, 2004, pursuant to due notice. Jennifer Bellolio did not respond to the notices of hearing mailed to her by the Appeals Section by providing a telephone number of where she could be contacted at

the time of the scheduled consolidated hearing. The claimant did not participate in the hearing held.

Kathy Anderson, Human Resource Coordinator, participated on behalf of DES Staffing Services Inc. Employer's Exhibit One, consisting of four pages, was admitted into evidence as a late exhibit when received.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Jennifer C. Bellolio was initially employed as a temporary employee with DES Staffing Services, Inc., on or about May 14, 2003 when she was assigned to Data Vision. The claimant was informed that she was being discharged from her employment with Data Vision by Brian Moussalli, a division manager with DES Staffing Services, Inc. Following the separation of the claimant's temporary employment assignment with Data Vision, a new job assignment was made. Brian Moussalli contacted the claimant personally and offered a job on the telephone with Wittern Company for a collection position at $12.60 per hour on the first shift. The claimant did not immediately accept the position. The record establishes that the claimant had become employed elsewhere and had earned wages with Rescare, Inc. in the amount of $3,062.00 during the third quarter of 2003, and wages in the amount of $1,028.00 with Behavioral Health Resources during the third quarter of 2003.

In any event, the determination relating to the claimant's separation from her employment with DES Staffing Services, Inc. on July 29, 2003 has been determined by a prior decision dated December 8, 2003, reference 01, and that decision remains in full force and effect. Said decision was the subject matter of the companion decision in this consolidated hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

871 IAC 24.28(8) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(8) The claimant voluntarily left employment. However, there shall be no disqualification under section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

The evidence in the record clearly establishes that there can be no disqualification under Iowa Code Section 96.5-1 if a decision on the same separation has been made on a prior claim by a representative of the department and the decision has become final. The employer, in effect, has contended that the claimant voluntarily left her employment because she had declined an assignment.

DECISION:

The unemployment insurance decision dated January 30, 2004, reference 01, is affirmed. Jennifer C. Bellolio is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements and benefits paid may be charged to the account of DES Staffing Services, Inc.

kjf/b