

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIA S TILLMAN

Claimant

APPEAL NO. 14A-UI-09295-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 09/22/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 4, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 26, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Vicky Matthias participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant failed to accept suitable work without good cause could be considered and decided. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's average weekly wage from her high quarter earnings on her August 2013 claim for benefits was \$749.59. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 22, 2013. Her average weekly wage from her high quarter earnings was \$749.59.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on a full-time assignment as a sanding operator at Omega Cabinets in Waterloo, Iowa, at a rate of pay of \$9.50 per hour.

The claimant was absent due to illness on July 15. She left work early due to illness on August 5 and 6. She was again absent due to illness on August 11. The claimant properly notified the employer about her absences. Omega Cabinets informed the employer that it

wanted the claimant's assignment ended because she had missed too much work. The claimant was notified that her assignment had ended. The assignment ending did not terminate the claimant's employment with the employer.

On August 12, the claimant was offered an assignment at Delta Sports, which is located in Dike, Iowa, about 10 miles away from Waterloo. She was told that it was a one-day assignment and the rate of pay was \$10.75 per hour. She declined the offer because she did not have transportation out of town. The claimant was available of any jobs in Waterloo.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

A strong argument can be made that claimant's removal from the assignment at Omega Cabinets' request was not a discharge, even if the separation is treated as a discharge, her separation was not for willful and substantial misconduct. Instead, the claimant was absent due to illness and properly reported the absences.

The next 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 § 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....

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she was informed the job was only for one day. As a result, the work would not be considered suitable under the wage formula of Iowa Code § 96.5-3-a. In addition, the claimant had good cause to decline the job because it was ten miles out of town.

The unemployment rules state that persons are unavailable for work if they do not have transportation from their residence to their usual area of employment. The rules, however, state that persons who restrict themselves to employment in their usual area of employment are not disqualified. 871 IAC 24.23(4). In this case, the claimant was available to work in her usual area of employment in Waterloo.

DECISION:

The unemployment insurance decision dated September 4, 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs