

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

STEVEN J LINDHORST  
421 HARRISON ST  
COUNCIL BLUFFS IA 51503

WARLYN INVESTMENTS INC  
COUNCIL BLUFFS SEWING CENTER  
102 E BROADWAY  
COUNCIL BLUFFS IA 51503

Appeal Number: 05A-UI-04191-SWT  
OC: 03/13/05 R: 01  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 12, 2005, reference 01, that concluded he had failed to accept an offer of suitable work without good cause. A telephone hearing was held on May 12, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Keith Skinner participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a repair and sales associate in the employer's sewing machine and vacuum sales and repair store in Council Bluffs, Iowa, from January 2002 to March 12, 2005. His rate of pay was \$10.00 plus commissions, which included a percentage of

the store sales per month if the store's budget was met. The claimant was laid off from his employment on March 12, 2005.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 13, 2005. His average weekly wage based on his highest quarter of earnings in his base period was \$682.63.

On March 24, 2005, the owner, Keith Skinner, offered the claimant a job working at the employer's store in Omaha, Nebraska. The store was about 16 miles from the claimant's home. The store in Council Bluffs was approximately four blocks away from the claimant's house. The claimant was told that he would perform vacuum cleaners repair work and be a backup to the other sales personnel. Skinner told the claimant the job paid \$10.00 an hour and he would work something out with the claimant regarding commissions on vacuum repairs. Skinner did not mention anything about receiving a percentage of the store sales.

The claimant told Skinner that he would have to think about it. Skinner told the claimant that he would need the claimant to contact him within the next few days if he was interested in the job. The claimant considered the job but decided to decline the job offer because the job would have paid the claimant substantially less than what he had been receiving before when the commissions were figured in and the job required the claimant to commute approximately 30 miles round-trip daily. The claimant failed to contact Skinner regarding the Omaha job within the time designated about the job with the intention of not accepting the job.

The claimant has been actively seeking employment and is available for work in his local area.

#### REASONING AND CONCLUSIONS OF LAW:

The 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 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....

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 evidence establishes that the job about 15 miles farther than his previous job and the compensation would have been less than 100 percent of average weekly wage of \$682.63 because the commissions would have been less because of the claimant's position as a backup to the other salespersons. As a result, the job offered the claimant does not meet the suitable work standards of the law.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as defined by the unemployment insurance law in Iowa Code Section 96.4-3. The evidence establishes that the claimant is able to and available for work.

**DECISION:**

The unemployment insurance decision dated April 12, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/s