

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J HUDELSTON

Claimant

APPEAL NO: 11A-UI-16206-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC/SEDONA STAFFING

Employer

OC: 10/16/11

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's December 16, 2011 decision (reference 02) that concluded Mary J. Hudelston (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2012. The claimant participated in the hearing. Chad Baker appeared on the employer's behalf and presented testimony from one witness, Joe Vermeulen. 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:

Is the claimant disqualified due to refusing an offer of suitable work? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on March 17, 2011. As of the date of the hearing her most recent assignment ended October 14, 2011. Because of physical restrictions the claimant had disclosed to the employer upon her hire, specifically that she could do only minimal lifting (no more than ten pounds), the claimant's assignments had all been of a clerical nature; her most recent assignment had been working as a call center representative.

On October 31 the employer made a call seeking to offer a warehouse processing job at a specific business client to the claimant, to begin on November 1 at \$9.00 per hour. The employer asserted that its representative had spoken directly to the claimant; the claimant denied that the conversation had been directly with her, but that the representative had spoken to her son, who also was working with the employer. The assignment was declined because the claimant had previously inquired of another of the employer's representatives as to whether she could work a warehouse processor job at that business client, as her son was working

there, but she was informed by the employer's representative that there were no jobs at that business client that would fall within the claimant's physical restrictions.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work and if so whether the refusal was disqualifying.

Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if she has failed without good cause to accept suitable work when offered. However, applying this statute, 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant.

In this case, there is a serious issue as to whether it was the claimant who made the actual refusal of work. However, even assuming it was she who declined the offer, the refusal would not be disqualifying. Rule 871 IAC 24.24(2)(a) provides that in order for a refusal to be of a "suitable job" and disqualifying for that claimant, the job offered must be within the claimant's physical capabilities. The job offered was not within the claimant's physical capabilities. Benefits are allowed, if the claimant is otherwise eligible.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that she is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's December 16, 2011 decision (reference 02) is affirmed. The claimant did not refuse a suitable offer of work without good cause. She is able and available for work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs