

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN S MCGINNIS-BROWN

Claimant

APPEAL NO: 07A-UI-06368-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY ACTION OF EASTERN IOWA

Employer

**OC: 06/04/06 R: 04
Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Community Action of Eastern Iowa (employer) appealed a representative's June 21, 2007 decision (reference 03) that concluded Erin S. McGinnis-Brown (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 July 12, 2007. The claimant participated in the hearing. Pam Damhorst appeared on the employer's behalf. 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.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The claimant started working for the employer on January 8, 2001. She worked full time as a teaching assistant at the employer's Scott Community College headstart program. Her most recent day of work was May 30, 2007. She routinely worked on an academic year basis.

The employer believed that on or about May 25 the center director or an assistant had offered the claimant a summer job working in place of a teacher over the summer. The claimant denied that there was any actual job offer, but merely a mention that there were two teacher position vacancies over the summer working with infants and toddlers to age three. The claimant was not qualified for the teacher position and did not pursue the mention of the vacancies.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

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. 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 24.24(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 employer believed that an actual job offer had been made. However, the claimant denied there was an actual offer. No witness was available at the hearing to provide firsthand testimony on behalf of the employer under oath and subject to cross-examination. The employer relies exclusively on a general understanding from the center director; however, without that information being provided firsthand, the administrative law judge is unable to ascertain whether the director might have been mistaken, whether she is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the director's report. Under the circumstances of this case, the administrative law judge concludes that the claimant's testimony is more credible. In this case, there was no bona fide offer of work and no definite refusal of work.

Further, the claimant was not qualified for the vacancies that were informally mentioned to her, so a refusal would not be disqualifying. 871 IAC 24.24(2). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's June 21, 2007 decision (reference 03) is affirmed. The claimant did not refuse a bona fide and suitable offer of work without good cause. 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