

**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**

**MELVA A WANAMAKER
412 S 4TH ST
MAPLETOWN IA 51034**

**GREENOUGH ENTERPRISES LLC
ONAWA DAIRY QUEEN
17344 - 128TH ST
WHITING IA 51063**

**Appeal Number: 04A-UI-03495-SW
OC 11-16-03 R 01
Claimant: Appellant (1)**

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 - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 25, 2004, reference 01, that concluded the claimant had failed to accept an offer of suitable work without good cause. A hearing was held on May 12, 2004, in Sioux City, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Katherine Larson participated in the hearing on behalf of the employer with a witness, Cynda Gustin.

FINDINGS OF FACT:

The claimant worked part time as a waitress for the employer from April 2003 to October 31, 2003. At that point, the restaurant closed for the winter season. The claimant filed a new claim for unemployment insurance benefits with an effective date of November 16, 2003. She was exempted from having to make job contacts because she was a laid-off employee who was going to be recalled in the spring.

Sometime in early March 2004, the owner of the restaurant, Katherine Larson, telephoned the claimant and recalled her to employment effective March 8, 2004. The claimant declined the offer of work and informed the employer that she intended to retire. The claimant did not return to work for the employer because she was uncomfortable working with the younger employees whom she felt were disrespectful and discourteous. The job offered would have provided her with the same hours and wages as she worked the previous year. The last weekly claim for unemployment insurance benefits that the claimant filed was for the week ending March 6, 2004.

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 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.

The claimant is disqualified from receiving unemployment insurance benefits effective March 8, 2004, because she failed to accept an offer of suitable work without good cause. The wage the claimant would have received meets the standard found in the statute. The claimant's desire to retire and her dislike of working with the younger employees would not provide cause to refuse the offer of work made to her. Since the disqualification is effective after she filed her last weekly claim, the claimant is not overpaid any unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated March 25, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/s