

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

JOAN I BURG
213 – 8TH ST
AMES IA 50010

AMES NEWS AGENCY INC
2110 E 13TH ST
PO BOX 1907
AMES IA 50010-1907

Appeal Number: 04A-UI-08198-DT
OC: 06/27/04 R: 02
Claimant: Respondent (5)

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 96.5-1 – Voluntary Leaving - Layoff
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Ames News Agency, Inc. doing business as Walt's Hallmark (employer) appealed a representative's July 23, 2004 decision (reference 02) that concluded Joan I. Burg (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 August 19, 2004. The claimant participated in the hearing. Gary Hurlbut appeared on the employer's behalf and presented testimony from one other witness, Connie Wilson. 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.

FINDINGS OF FACT:

The claimant started working for the employer on August 16, 2001. She worked part-time (10 to 12 hours per week) as a lunchtime relief sales clerk in the employer's downtown gift and card shop. Her last day of work was June 26, 2004. The downtown store permanently closed as of that date.

On or about June 15, 2004, Ms. Wilson, the manager of another of the employer's stores located a short distance from the downtown store contacted the claimant regarding the possibility of the claimant working at the other store. There was some discussion about whether daytime hours were available, or whether it would only be nights and weekends. Ms. Wilson had the impression that the claimant was only available to work during the day, so when she subsequently learned that her daytime employee did not wish to give up any daytime hours, she left a message for the claimant sometime prior to June 26 from which the claimant understood that there was currently no work available for her.

The claimant established an unemployment insurance benefit year effective June 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant's job ended because of the closing of the store. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed, if the claimant is otherwise eligible.

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

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. 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, (8) provide:

(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.

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

There appears to be some question as to whether the employer made a "bona fide offer" of employment to the claimant. However, to the extent there was a "bona fide offer," it clearly took place prior to the claimant's establishing her claim for unemployment insurance benefits. Therefore, it cannot be the basis for a disqualification. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's July 23, 2004 decision (reference 02) is amended with no effect on the parties. The claimant was laid off due to a lack of work. She is not disqualified due to a refusal of work. Benefits are allowed, provided the claimant is otherwise eligible.

ld/kjf