

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

CAROL A MOUTRIE
2685 KENTUCKY AVE
MT PLEASANT IA 52641

GREAT RIVER MEDICAL CENTER
HUMAN RESOURCES DEPARTMENT
1221 S GEAR AVE
WEST BURLINGTON IA 52655-1679

Appeal Number: 04A-UI-01136-RT
OC: 12-14-03 R: 04
Claimant: Respondent (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 – Failure to Accept Work
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

A letter of explanation from the employer, Great River Medical Center, was treated as a timely appeal from an unemployment insurance decision dated January 23, 2004, reference 03, allowing unemployment insurance benefits to the claimant, Carol A. Moutrie. After due notice was issued, a telephone hearing was held on February 24, 2004, with the claimant participating. Rosie Lohmann, Human Resources Assistant, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by Cross Roads Hospice, which was part of Henry County Hospital and then Henry County Health Center. The Cross Roads Hospice closed on or about December 6, 2003, and the claimant's job was eliminated. The claimant then filed for unemployment insurance benefits. The employer herein, Great River Medical Center, was asked if it would take some of the patients of Cross Roads Hospice. It consented to do so and also took some of the employees of Cross Roads Hospice. In informal discussions between Chris Olsen, of Great River Medical Center, and the claimant, a potential position was discussed with the claimant, involving ten hours per week. This was an informal discussion and no technical offer was made. Ms. Olsen hoped that they could create such a position. The claimant refused interest in such a position because it was only ten hours per week and her employment with Cross Roads Hospice had been full time and the claimant needed to continue full-time work. The employer was unable to participate in fact finding and then was instructed to send a letter of explanation, which it did. This letter of explanation was treated as an appeal of the initial decision, although the employer may not have intended to appeal that decision, but merely wanted to inform Workforce Development. Pursuant to her claim for unemployment insurance benefits filed effective December 14, 2003, the claimant has received unemployment insurance benefits in the amount of \$2,565.00 as follows: \$285.00 per week for nine weeks from benefit week ending December 20, 2003 to benefit week ending February 14, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is disqualified to receive unemployment insurance benefits because she refused to accept suitable work. The claimant is not disqualified to receive unemployment insurance benefits.
2. Whether the claimant is overpaid unemployment insurance benefits. The claimant is not overpaid unemployment insurance benefits.

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.

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 administrative law judge concludes that the employer has the burden to prove that the claimant has refused to accept suitable work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant refused to accept suitable work. The testimony of the two witnesses is remarkably similar and not contested. In fact, it does not appear that the employer even alleges that the offer or potential offer made to the claimant was suitable. The claimant was laid off from her full-time employment with Cross Roads Hospice when it closed and the claimant's job was eliminated on or about December 6, 2003. The claimant and the employer, Great River Medical Center, engaged in an informal discussion as to a potential position for the claimant of ten hours per week. Since the claimant's employment had been full time with Cross Roads Hospice and she required full-time work, the claimant refused. No formal offer of work was made to the claimant because there was not even a position yet officially established, but the claimant did indicate that she was not interested in such a part-time position. Accordingly, the administrative law judge concludes first that a bona fide offer of work was not made to the claimant and second, even if a bona fide offer of work had been made to the claimant, it was only for part-time work and this was not suitable work because the claimant had been previously employed full time. Accordingly, the administrative law judge concludes that the claimant did not refuse to accept an offer of suitable work and, as a consequence, the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,565.00 since filing for such benefits effective

December 14, 2003. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of January 23, 2004, reference 03, is affirmed. The claimant, Carol A. Moutrie, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of any alleged failure to accept suitable work.

b/b