

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA R KIMM**  
Claimant

**APPEAL NO. 13A-UI-07807-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TNT TAX INC**  
**LIBERTY TAX SERVICE**  
Employer

**OC: 03/10/13**  
**Claimant: Respondent (4)**

Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 24, 2013 (reference 05) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on August 9, 2013. Claimant participated. Employer participated through Tim Townsend.

**ISSUES:**

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to and available for work?

Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer and claimant negotiated about her returning to work as a seasonal tax preparer/office manager and made an offer of work to claimant in December 2012 to return to work on January 7, 2013 under the same terms as she was employed in 2012. (Her separation date in 2012 was April 22.) Claimant agreed and told Townsend via text on January 4, 2013, she had been delayed and told him to call her brother, Brian, to work in the interim. (Employer's Exhibit 1, p. 5) Townsend told claimant he had moved Danielle to office manager since he needed stability in the office and admitted he would not pay her what she had been making as manager. (Employer's Exhibit 1, pp. 5, 6) Claimant said she wanted \$12.50 per hour as a preparer and school hours. (Employer's Exhibit 1, p. 6, 7) He told her he knew she would not be able to return until January 14, 2013. (Employer's Exhibit 1, p. 7) Claimant promised to get Townsend proof of her continuing education hours by Sunday, January 6, 2013. (Employer's Exhibit 1, p. 9) There was no further communication and claimant did not report to work on January 14, 2013, or thereafter. Claimant filed a claim with an effective date of March 10, 2013.

Claimant received benefits in the gross amount of \$2,310.00 for the six weeks ending April 20, 2013.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the offer of work was made outside of the benefit year.

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(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Because the offer and related negotiations took place outside of the benefit year, the ALJ does not have jurisdiction to determine qualification or disqualification based upon the offer of work. However, claimant did not provide the proof of continuing education completion to Townsend or make herself available for work on January 14, 2013 or thereafter as she had agreed. Therefore, she is not disqualified from receiving benefits, but is not eligible for the period from the March 10, 2013, claim effective date through the week ending April 20, 2013, the seasonal work end date. Benefits are withheld for that period and allowed effective April 21, 2013, provided she is otherwise eligible.

The administrative law judge concludes claimant has been overpaid benefits for the period in question.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant was not available for work for the six weeks ending April 20, 2013, she was not entitled to the benefits paid during that time. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The June 24, 2013 (reference 05) decision is modified in favor of the appellant. Claimant failed to accept an offer of work made outside of her benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Because she did not make herself available for that work, she is not eligible for the period from the March 10, 2013, claim effective date through the week ending April 20, 2013. Benefits are withheld for that period and allowed effective April 21, 2013, provided she is otherwise eligible. Claimant is expected to make at least two work searches per week for each week of benefits claimed. Claimant is overpaid benefits in the amount of \$2,310.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs