

hearing had initially been scheduled in this matter for October 12, 2005 at 9:00 a.m. and rescheduled at the employer's request.

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 never employed by the employer, Tri-Center Community Schools. The claimant had applied for unemployment insurance benefits effective July 17, 2005 and had been receiving benefits thereafter. In an effort to obtain employment the claimant wrote a letter of inquiry to the employer herein inquiring about vacancies. The employer's witness, Brian Wedemeyer, Middle School Principal and Athletic Director, called the claimant and asked the claimant if she would be interested in being a substitute custodian. Because the claimant had been, for a number of years, a media aide or librarian aide and she wanted full time work and she did not want to do the heavy lifting involved as a custodian, the claimant said she was not interested. Wages were not discussed. No further contact was made between the claimant and the employer.

The claimant has placed no restrictions on her ability to work except that she would prefer a library aide or media aide because that has been her previous experience. The claimant had suffered an injury but had been released by her physician to return to work before she filed for benefits. The claimant wants full time employment. The claimant has placed no restrictions on her availability for work including days or times when she could or could not work. The claimant is making two in-person job contacts or résumé job contacts per week. The claimant has been approved by Iowa Workforce Development to apply for work using résumés.

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 an offer of suitable work. The claimant did not refuse to accept an offer of suitable work and, as a consequence, she is not disqualified to receive unemployment insurance benefits.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she was not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons.
3. 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.

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:

The administrative law judge concludes that the claimant did not refuse to accept an offer of suitable work. The evidence establishes that the claimant sent a letter of inquiry to the employer. The employer's witness, Brian Wedemeyer, Middle School Principal and Athletic Director, called the claimant and inquired if she would be interested in a substitute custodian position. The claimant said that she would not be interested because she wanted to be a media aide or librarian aide because that was what her previous experience had been. The claimant also wanted full time work. The claimant did not want to do the heavy lifting expected in a custodial position. The administrative law judge concludes that these are all legitimate reasons for the claimant's refusal of work and therefore, the offer of work was not reasonable in view of the claimant's training and experience and health and her desire to have full time employment. Accordingly, the administrative law judge concludes that the claimant did not refuse to accept suitable work and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

Iowa Code section 96.4-3 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".

The administrative law judge concludes that there is a preponderance of the evidence that the claimant is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3. The claimant credibly testified that she has placed no physical restrictions or training restrictions on her ability to work except that she wants to remain a library aide or media aide because that was what her prior experience had been. The claimant also testified

that she had an injury but has been fully released to return to work by her physician. However, the claimant does not want a position involving the heavy lifting required of a custodian position. Her prior employment did not require such heavy lifting. The administrative law judge concludes that these restrictions do not unreasonably impede the claimant's opportunity for employment and therefore the claimant remains able to work. The claimant credibly testified that she has placed no restrictions on the time or days when she could or could not work concerning her availability for work. The claimant credibly testified that she is making either two in-person job contacts or résumé contacts each week. The claimant testified that Iowa Workforce Development has approved résumés as a means of job contacts and the administrative law judge notes that Iowa Workforce Development records support this. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnest and actively seeking work and, as a consequence, she is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise entitled to such benefits.

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 since filing for these benefits effective July 17, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid these benefits.

DECISION:

The representative's decision of September 9, 2005, reference 05, is affirmed. The claimant, Karen D. Dittmer is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she did not refuse to accept an offer of suitable work and she is able, available, and earnestly and actively seeking work. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits as a result of any offer of employment by the employer herein or her ability or availability or seeking work.

dj/kjw