

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEMARY J CAMPBELL
Claimant

APPEAL NO: 14A-UI-03617-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 03/09/14
Claimant: Respondent (4)

Section 96.4-3 – Able and Available
Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 2, 2014, reference 02, that held it did not offer work to claimant on March 6, 2014 when she had an unemployment claim on file, and benefits are allowed. A telephone hearing was held on April 24, 2014. The claimant did not participate. Michael Payne, Risk Management, participated for the employer. Employer Exhibits 1 and 2 was received as evidence.

ISSUES:

Whether claimant refused an offer of suitable work.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked for the employer from October 23, 2012 until on March 4, 2014. The department claimant claim record shows claimant's average weekly earnings from this employment were \$243.61.

After claimant completed her March 4 assignment, the employer offered a full-time cashier job on March 6 at Peck's Green Thumb for \$9.00 an hour. Claimant declined the job offer stating she wanted part-time work no more than four hour shifts.

The department issued a April 2, 2014 decision, reference 03, that disqualified claimant as not meeting the availability requirements of the law because she was limiting her hours she was willing to work. Claimant did not appeal. She has not received any benefits on her claim.

Claimant failed to respond to the hearing notice. There is no UI Appeals C2T control system record claimant called in with a phone number request to participate.

CONCLUSIONS OF LAW:

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.

The administrative law judge concludes that no claimant job refusal disqualification is imposed for the employer March 6, 2014 offer, because claimant had not filed an unemployment claim. The employer could have renewed the job offer after receiving the notice of claim, but failed to do so.

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 further concludes claimant is not able and available for work effective March 9, 2014 due to placing a restriction on her work hour employability. Claimant's refusal of full-time work in the community where she lived was an unreasonable work restriction. This conclusion is supported by a subsequent department decision claimant placed a limit on her work hour availability and she did not appeal.

DECISION:

The department decision dated April 2, 2014, reference 02, is modified in favor of the employer. No job refusal disqualification for refusing work on March 6, 2014 is imposed as it was prior to the unemployment claim, but an availability disqualification for placing a restriction on her work hours is imposed. Benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css