

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY TENEYCK

Claimant

APPEAL NO. 11A-UI-00227-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE NEW HOMESTEAD

Employer

OC: 07-18-10

Claimant: Respondent (2)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 28, 2010, reference 05, decision that allowed benefits. After due notice was issued, a hearing was held on February 18, 2011. The claimant did not participate. The employer did participate through Maradith Janssen, Administrator and Ann Simpson, Director of Nursing. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a CNA/CMA full time beginning February 15, 2010 through August 26, 2010 when she refused to return to work from a layoff. The claimant was on maternity leave from May 23, 2010 to July 14, 2010. The claimant was notified that she was not allowed to work in a nursing home as she had been placed on the child abuse registry. The employer agreed to put the claimant on layoff while she pursued permission to regain the ability to return to work in a nursing home. The claimant filled out the paper work with the employer. On August 26, the claimant was cleared by the state to return to work for the employer. The employer called the claimant to ask her to return to work. The claimant initially indicated she would return to work but never did so. Work at the same hours and wages was available for the claimant if she had returned to work. The employer made an offer of work to the claimant on January 6, 2011 and kept attempting to contact the claimant to get her to return to work through January 25, 2011. When the claimant did not return to work the employer considered that she did not want to return work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work.

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.

Employer made an offer of work to claimant on January 6, 2011. That offer included the following terms: return to the same job at the same hours and wages that she had performed since she began her employment. The claimant refused to return to work after being allowed to do so by the state. The offer was suitable as it was for the same position at the same hours and wages that the claimant had previously performed. The claimant did not have a good-cause reason for the refusal. Benefits are denied effective January 6, 2011.

DECISION:

The December 28, 2010, reference 05, decision is reversed. Claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs