

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

MELISSA A MAYS  
3126 FAIRVIEW ST  
DAVENPORT IA 52804-4432

MANPOWER INTERNATIONAL INC  
MANPOWER TEMPORARY SERVICES  
C/O TALX UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 06A-UI-02701-DT  
OC: 02/05/06 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Manpower International, Inc. (employer) appealed a representative's March 2, 2006 decision (reference 02) that concluded Melissa A. Mays (claimant) was qualified to receive unemployment insurance benefits in connection with a potential offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2006. This appeal was consolidated for hearing with one related appeal, 06A-UI-02700-DT. The claimant participated in the hearing. Sally Jacobs appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse a offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer on April 26, 2005. She worked full time as a customer service call center representative at the employer's business client at the rate of \$11.10 per hour. The employer informed her of the ending of the assignment on February 6, 2006. She checked in for possible work several times thereafter.

The claimant established an unemployment insurance benefit year effective February 5, 2006. Based on an average weekly wage during her base period high quarter of \$386.00, her weekly benefit amount was calculated to be \$218.00. Her effective average hourly wage then was \$9.65 per hour ( $\$386.00 \div 40$ ).

On February 21, 2006, the employer offered the claimant a one-day assignment at the rate of \$7.00 per hour. The claimant declined due to the wage. On March 2, 2006, the employer offered the claimant a two-day assignment at the rate of \$8.00 per hour that required full time standing. Due to a physical limitation, the claimant requires a sitting job. Due to the pay and the standing, the claimant declined the position.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

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.

871 IAC 24.24(15) provides in pertinent part:

In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- b. The individual's physical fitness.
- d. Length of unemployment.
- i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

871 IAC 24.24(2) provides in pertinent part:

Job within claimant's capabilities.

- a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

The positions offered were not suitable to the claimant, as the wage was not at least 100 percent of her average weekly wage, and in the case of the March 2, 2006 offer, was outside the claimant's physical limitations. Benefits are allowed, if the claimant is otherwise eligible.

#### DECISION:

The representative's March 2, 2006 decision (reference 02) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/kkf