

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

CATHERINE SMITH
2350 E 37TH CT
DES MOINES IA 50317

AMERICAN PIE LLC
HOME TEAM PIZZA
9950 SWANSON BLVD
CLIVE IA 50325-6932

Appeal Number: 04A-UI-02106-CT
OC: 01/18/04 R: 02
Claimant: Respondent (4)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(3)a – Refusal of Work
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

American Pie filed an appeal from a representative's decision dated February 16, 2004, reference 01, which held that no disqualification would be imposed regarding Catherine Smith's separation from employment. After due notice was issued, a hearing was held by telephone on March 25, 2004. The employer participated by Lori Skinner, Owner/Manager. Exhibit One was admitted on the employer's behalf. Ms. Smith did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Smith was last employed by American Pie from August of 2003 until January 18, 2004. She worked as a shift runner, or shift leader. Effective January 19, 2004, the employer sold the franchise at which Ms. Smith worked to Mandi and Jason Birchmier. During the week prior to the sale, the new owners met with the current employees and advised them that there would be no changes in their employment once the new owners took over. Ms. Smith declined the offer of continued employment. American Pie had assumed that she would continue the employment with the new owners and did not find out until later that she had turned down the offer.

On or about February 2, Ms. Smith contacted American Pie about the availability of work. She was offered work as a driver for 35 hours per week at a rate of \$6.25 per hour. She was to start on February 9 but did not do so. The employer has not heard anything further from her.

Ms. Smith filed a claim for job insurance benefit effective January 18, 2004. The average weekly wage paid to her during that quarter of her base period in which her wages was highest was \$196.25. She received \$127.00 in job insurance benefits for each of the three weeks ending February 28, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Ms. Smith was separated from American Pie for any disqualifying reason. She was separated on January 18 because the employer no longer had work available for her at the location where she worked. Although the new owners had work available, American Pie did not have work at that location. Therefore, Ms. Smith's separation from American Pie on January 18, 2004 was for no disqualifying reason.

The next issue is whether Ms. Smith refused suitable work. It is true that the new owners offered her continued employment. However, the offer was made prior to her filing a claim for job insurance benefits effective January 18, 2004. Iowa Workforce Development has no jurisdiction over work refusals which occur prior to the filing of a valid claim for job insurance benefits. See 871 IAC 24.24(8). Therefore, the refusal of work with the new owners was not a

disqualifying event. However, Ms. Smith was offered new employment with American Pie and was to start on February 9, 2004. The job as a driver was offered during the first five weeks of her unemployment. Therefore, the job had to pay at least 100 percent of the average weekly wage paid to her during that quarter of her base period in which her wages were highest. In other words, the job which was to start on February 9 had to pay at least \$196.25 per week in order to be considered suitable work. The job paid \$218.75 per week and was, therefore, suitable work. Ms. Smith did not participate in the hearing to offer evidence as to why the job was not otherwise suitable. Because of the work refusal, Ms. Smith is ineligible to receive benefits effective with the Sunday of the week in which the work was refused, February 8, 2004.

Ms. Smith has received \$381.00 in job insurance for the three weeks ending February 28, 2004. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated February 16, 2004, reference 01, is hereby modified. Ms. Smith refused an offer of suitable work on February 9, 2004 and is denied benefits effective February 8, 2004. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Smith has been overpaid \$381.00 in job insurance benefits.

cfc/