

**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**

**HOLLIE D WILLIAMSON
711 – 8TH AVE
GRINNELL IA 50112**

**ENGINEERED PLASTIC
COMPONENTS INC
1408 ZIMMERMAN DR S
GRINNELL IA 50112**

**Appeal Number: 05A-UI-02597-DT
OC: 08/22/04 R: 02
Claimant: Respondent (5)**

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 96.5-1 – Voluntary Leaving – Layoff
Section 96.5-3-a – Work Refusal
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Engineered Plastic Components, Inc. (employer) appealed a representative's March 7, 2005 decision (reference 02) that concluded Hollie D. Williamson (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2005. The claimant participated in the hearing. Mark Fosnaught 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.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Did the claimant refuse an offer of suitable work or recall without good cause? Is she able and available for work? Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on February 16, 2004. She worked full time as a press operator in the employer's injection plastic molding manufacturing facility. Her last day of work was August 23, 2004. Effective that date, the employer informed the claimant that she was being laid off for lack of work.

After the layoff, the claimant checked in regularly with the employer with regard to the possibility of recall through approximately November 2004. She filed weekly claims and received unemployment insurance benefits through the week ending November 20, 2004. When no recall appeared likely at that time, the claimant sought and accepted other employment. She began that new full time employment effective December 13, 2004.

In approximately mid-January 2005, the claimant contacted the employer regarding her W-2 tax form. In speaking with Mr. Fosnaught, the employer's human resources manager, the claimant indicated that she had accepted other full time employment. On February 1, 2005, Mr. Fosnaught sent the claimant a certified letter of recall to work requiring a response by February 7, 2005. The claimant did not respond to the letter because she did not receive it, nor did she receive information from the United States Postal Service that there was a letter pending delivery to her. The letter was returned to the employer as undeliverable on February 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The actual separation occurred August 23, 2004, and was a layoff due to lack of work by the employer. Once a separation by layoff has occurred, any subsequent failure to return by an employee after recall is treated as a potential refusal of work, not a new separation. As to the separation issue, benefits are allowed if the claimant is otherwise eligible.

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

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(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

A letter was sent to the claimant, but it is clear that the claimant did not receive the letter nor otherwise know that there had been a recall. In this case, there was no bona fide offer of work and no definite refusal of work. Further, even if the claimant had received the offer of recall, she had good cause for not accepting recall because of her other gainful employment. As to the refusal issue, benefits are allowed, if the claimant is otherwise eligible.

The final issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

As of December 13, 2004, the claimant began working full time for another employer, and is presently employed to such a degree as to remove her from the labor market. As of December 13, 2004, she is no longer able and available for work, and is not eligible for

unemployment insurance benefits until such time as her availability status might change. The claimant did not claim nor receive any unemployment insurance benefits for any week that she was not able and available for work.

DECISION:

The representative's March 7, 2005 decision (reference 02) is modified with no effect on the parties. The claimant was laid off due to a lack of work effective August 23, 2004. The claimant did not refuse a suitable offer of work or recall without good cause. The claimant was able to work and available for work until December 13, 2004. Benefits are allowed until that date, provided the claimant was otherwise eligible. Benefits are denied as of that date until such time as the claimant might again become able and available for work, if she is then otherwise eligible.

ld/pjs