

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**APRIL M WERLING**

Claimant

**APPEAL NO. 10A-UI-04878-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EASTERN IOWA VISITING NURSES  
& HOME HEALTH CARE LLC**

Employer

**Original Claim: 02/21/10  
Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal

**STATEMENT OF THE CASE:**

Eastern Iowa Visiting Nurses & Home Health Care, L.L.C. (employer) appealed a representative's March 23, 2010 decision (reference 02) that concluded April M. Werling (claimant) was qualified to receive unemployment insurance benefits in conjunction with a potential refusal of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2010. The claimant participated in the hearing. Linda Fanton 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:**

Is the claimant disqualified due to refusing an offer of suitable work?

**FINDINGS OF FACT:**

The claimant worked on a PRN (*Pro re nata* – commonly used in medicine to mean "as needed") basis for the employer. The claimant established an unemployment insurance benefit year effective February 21, 2010 because of a separation from her other full-time employer. As determined in a separately issued representative's decision on March 16, 2010 (reference 01), the employer discharged the claimant on February 18, 2010, but it was not shown to be for misconduct. The employer did not appeal that decision and it has become final.

The claimant last performed work for the employer in about October 2009, doing blood pressure checks at a booth at a pumpkin festival. The last time the employer affirmatively offered some work to the claimant, which she declined, was June 29, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The only issue in this case is whether the claimant might be disqualified from unemployment insurance benefit eligibility due to refusing a suitable offer of work without good cause.

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(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Here, the claimant did not have an open claim at the time the last offer of work was made, so any refusal, even if it was without good cause, would not be effective to disqualify the claimant from benefits. It is likely that what the employer is actually attempting to do in this appeal is to argue that it had good cause for discharging the claimant because it believed she was not adequately available for work. However, this is an argument dealing with the grounds for separation, which has already been determined and is not subject to review in this appeal regarding the potential refusal of work by the claimant within her benefit year. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's March 23, 2010 decision (reference 02) is affirmed. The claimant did not refuse a suitable offer of work within her benefit year; a prior potential refusal cannot be utilized as the basis for a disqualification for a refusal of an offer of work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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