

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELAINE K ZAHRT

Claimant

APPEAL NO. 08A-UI-09727-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING
& PROFESSIONAL SERVICES LLC**

Employer

**OC: 10/14/07 R: 01
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work
Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Elaine K. Zahrt filed an appeal from a representative's decision dated October 15, 2008, reference 05, which disqualified the claimant from receiving benefits, finding that the claimant refused to accept suitable work with Aventure Staffing on September 23, 2008. After due notice was issued, a hearing was held by telephone on November 5, 2008. Ms. Zahrt participated personally. The employer participated by Robert Hardy, human resource assistant.

ISSUE:

Whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer on September 19, 2008. Ms. Zahrt was assigned to work as a general laborer at the Eaton Corporation facility in Spencer, Iowa, and was paid \$12.00 per hour. The claimant was laid off work on September 19, 2008, and sought additional assignments through Aventure Staffing & Professional Services. Ms. Zahrt refused offers of work at the Polaris facility in Spencer, Iowa, at the rate of \$12.00 per hour, and at R.R. Donnelly facility in Spencer, Iowa, at the rate of \$10.79 per hour. Both jobs were general-labor-type positions. The claimant alleges she refused because of a medical condition that prohibits her from traveling over 15 minutes away from her home in Rossie, Iowa, and from accepting any employment that does not offer immediate bathroom breaks.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Zahrt refused an offer of suitable work. It does.

The evidence in the record establishes that Ms. Zahrt refused an offer of work similar to positions that she has held in the past at the same rate of pay and geographic area offered by Aventure Staffing on or about September 23, 2008, as the claimant asserts that she is medically unable to accept employment that is farther than approximately 15 minutes away from her residence and unable to accept any work that does not offer the claimant the ability to take immediate bathroom breaks on demand whenever necessary. The claimant has provided no medical documentation to support her contention that the work offer was not suitable because of the claimant's physical condition. Iowa Administrative Code section 871-24.24(6) requires that medical certification from a medical practitioner be submitted to support a claimant's statement that work offered is not suitable because of the claimant's physical condition.

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 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The evidence in the record establishes that at least one of the offers of work made by Aventure Staffing to the claimant on September 23, 2008, was suitable based upon pay, location, and type of work. As the claimant has not supplied any medical certification to support her allegation of medical limitations, the administrative law judge concludes that the claimant, without good cause, refused an offer of suitable work. In order to be eligible to receive unemployment insurance benefits, a claimant must first satisfy benefit eligibility conditions of being able to work and available for work. An allegation of a medical condition that prevents a claimant from applying for or accepting work may raise the issue of the claimant's general availability for work as required by the provisions of the Iowa Employment Security Act.

DECISION:

The representative's decision dated October 15, 2008, reference 05, is affirmed. The claimant refused an offer of suitable work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw