

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINE E DAVIS**

Claimant

**APPEAL NO. 14A-UI-06924-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 07/14/13**

**Claimant: Respondent (2)**

Section 96.5-3-a – Refusal of Suitable Work

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Advance Services (employer) appealed a representative's July 2, 2014 (reference 06) decision that concluded Kristine Davis (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2014. The claimant participated personally. The employer participated by Michael Payne, Risk Manager, and Cathy Adkins, Office Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant worked for the employer from February 18, 2013 through May 30, 2014. The claimant had filed for unemployment insurance benefits with an effective date of July 14, 2013. She reopened her claim for benefits on June 7, 2014. Her average weekly wage was \$481.78. On June 2, 2014 the claimant wrote on her application that she would be willing to take a job that was less than 50 miles from home.

On June 6, 2014 the employer left a voice mail for the claimant offering a job. On June 9, 2014 the claimant went to the employer's office and discussed the job offer. The employer offered the claimant a full-time job of 40 or more hours per week at Rosenboom Machine and Tool. This job was for first-shift machine operator and paid \$13.00 or more per hour, or at least \$520.00 per week. The claimant could start immediately. The claimant refused the job because it would cost her too much to drive to the job that was 33 miles from home. The claimant thought she had written on her application that she would be willing to take a job that was less than 50-miles round trip from home.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant refused an offer of suitable work.

Iowa Code § 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.

The work was offered within two weeks of the claimant's unemployment and was required to provide the claimant wages one hundred percent of those paid to the claimant during the highest quarter of her base period. The evidence establishes that the claimant would have received at least 100 percent of her average weekly wages during her highest quarter of earnings. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the

claimant was suitable work. Commuting 33 miles to a job is not unreasonable. The claimant is disqualified from receiving unemployment insurance benefits.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge concludes that the claimant was overpaid unemployment insurance benefits, pursuant to Iowa Code Section 96.3-7, in the amount of \$1,360.00.

**DECISION:**

The representative's July 2, 2014 (reference 06) decision is reversed. The claimant refused suitable work and is disqualified from receiving unemployment insurance benefits. The claimant was overpaid unemployment insurance benefits in the amount of \$1,360.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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