

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

TRACY M LOEBACH
2235 AVENUE F
FORT MADISON IA 52627

MANPOWER
3101 FLINT HILLS DR
BURLINGTON IA 52601

Appeal Number: 04A-UI-11265-SWT
OC: 03/28/04 R: 04
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 - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 13, 2004, reference 01, that concluded the claimant, Tracy Loebach, was not subject to disqualification for failing to accept an offer of work. A telephone hearing was held on November 10, 2004. The parties were properly notified about the hearing. Loebach participated in the hearing. Debbie Chamberlain participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. Tracy Loebach worked for the employer from December 31, 2002, to

September 4, 2004. She was assigned to work at Dura Plastics in Burlington, Iowa. She worked 40 hours per week at a rate of pay of \$8.50 per hour.

Loebach was offered an assignment on October 1, 2004, to work as a clerical worker for Midwest Vinyl in Burlington, Iowa. The rate of pay was \$8.50 per hour for 40 hours of work per week, which is comparable to the going rate of pay for similar work in the local labor market. The job was a temporary position that was to last two months replacing a worker on maternity leave. The job was to start on October 5, 2004.

Loebach initially agreed to take the assignment. Loebach's boyfriend, however, was involved in a car accident on October 4 and was hospitalized. Loebach stayed with her boyfriend during his hospital stay. She called the employer on October 4 and informed a manager about her boyfriend's condition and told the manager that she was not able to start work on October 5. The manager told her that she should keep the employer informed about the situation and notify the employer at the end of the week about when she could start the job with Midwest Vinyl. By the end of the week, Loebach was still unsure when her boyfriend would be released from the hospital. She did not feel comfortable accepting the job until he was out of the hospital. She called the employer on October 8 and explained this to a manager. The manager told Loebach that she understood but explained that since Loebach was not able to accept the job, the employer was going to have to find someone else because Midwest Vinyl needed the position filled.

On October 8, Loebach failed to accept the work offered to her because of her boyfriend's health problems and the uncertainty as to when he would be released from the hospital. The job was otherwise acceptable, and she was qualified to perform the work based on her prior training and experience. Loebach was not available to work during the majority of the week ending October 9 due to her boyfriend's accident and hospitalization.

Loebach's boyfriend was released from the hospital on October 10. Loebach did not contact the employer about the job at Midwest Vinyl afterward because she understood it was no longer available. On October 12, Loebach received and accepted an offer of full-time permanent work from Great River Waste Recycling Center that she started during the week of October 18.

Loebach filed an additional claim for unemployment insurance benefits with an effective date of September 12, 2004. Her average weekly wage in the highest quarter of wages in her base period was \$310.92 or \$7.77 per hour. Loebach filed for and received \$175.00 in benefits for the week ending October 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Loebach is subject to disqualification for failing to accept an offer of suitable 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. . . .

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.

Loebach was offered suitable work as that term is defined by the unemployment insurance law. The job paid more than her average weekly wage from her high quarter of wages in her base period and provided work for which she was qualified. She admitted that she had no objection to the terms of employment offered to her. She failed to accept the employment on October 8, 2004, when she told the employer that she could not take the job and understood that that job would be offered to someone else.

After an individual has been determined to have refused suitable work, the next issue is whether Loebach had good cause to decline the work. "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." Norland v. Iowa Dept. of Job Service, 412 N.W.2d 904, 914 (Iowa 1987). I conclude Loebach's refusal of work, which was due to her boyfriend's accident and subsequent hospitalization, involved real, substantial, and reasonable grounds. She is not subject to disqualification because she had good cause to decline the job.

The next issue in this case is whether Loebach was able to work and available for work as required by Iowa Code section 96.4-3. She admitted that she was not available for work during the week ending October 9, 2004. She is ineligible for benefits for that week. During the week ending October 16, 2004, the final week that Loebach filed for benefits, she clearly was available for work since she was offered and accepted a full-time job.

The final issue is whether Loebach was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

As a result of this decision, Loebach was overpaid \$175.00 in benefits for the week ending October 9, 2004.

DECISION:

The unemployment insurance decision dated October 13, 2004, reference 01, is modified in favor of the employer. Tracy Loebach is not subject to disqualification for refusing work. She is ineligible for benefits for the week ending October 9, 2004, because she was not available for work. She was overpaid \$175.00 in unemployment insurance benefits, which she must repay.

saw/tjc