

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

BETH J SCOTT
12 LEISURELAND
NIOTA IL 62358

REGIONAL PRIVATE HEALTH
SERVICES INC
418 MAIN
PO BOX 147
DONNELSON IA 52625

Appeal Number: 04A-UI-10615-HT
OC: 08/29/04 R: 04
Claimant: Appellant (2-R)

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 – Refusal of Work

STATEMENT OF THE CASE:

The claimant, Beth Scott, filed an appeal from a decision dated September 22, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 20, 2004. The claimant participated on her own behalf. The employer, Regional Private health Services, Inc., participated by Administrator Susan Gelsthorpe.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Beth Scott had been employed by Private Health

Services, Inc., as a companion at \$6.00 per hour. She worked at the client's home in Ft. Madison, Iowa.

The client moved to a nursing home the last week in August 2004 and Administrator Susan Gelsthorpe offered the claimant other positions. One was as a companion in Mt. Pleasant, Iowa, at the same hours and wages. The claimant declined because it would add approximately 40 miles to her commute. The second position was as an aide in Danville, Iowa, at \$7.00 per hour. The claimant declined this job because, although she had the training to be an aide, she did not like to do the work since the client's were usually terminally ill. She had made it clear at the time she took the initial training she did not want to accept work in this capacity.

In addition, Ms. Scott indicated she did not want to work any further away than Ft. Madison because she did not have a reliable vehicle.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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(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.

The claimant declined job offers which were outside of the area in which she was able to commute reliably. One job included a position she had told the employer from the outset she would not do, and the other tripled her commute. Under the provisions of the above Administrative Code section, the work was not suitable and disqualification may not be imposed.

The claimant has limited the type of work she is willing to do, even though she has the necessary training, and the area in which she is available due to having unreliable transportation. The issue of whether she is able and available for work has not been determined and should be addressed.

DECISION:

The representative's decision of September 22, 2004, reference 01, is reversed. Beth Scott is qualified for benefits provided she is otherwise eligible.

The issue of whether the claimant is able and available for work given her unreliable transportation and refusal to work as an aide, is remanded to the Claims Section for adjudication.

bgh/tjc