

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

LORRAINE M MAEDCHE  
420 S 10<sup>TH</sup> ST  
CLARINDA IA 51632

NORTHWEST SERVICES  
624 W TORRANCE ST  
MARYVILLE MO 64468

Appeal Number: 04A-UI-03284-RT  
OC: 12-21-03 R: 01  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3 – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant, Lorraine M. Maedche, filed a timely appeal from an unemployment insurance decision dated March 22, 2004, reference 04, denying unemployment insurance benefits to her because she refused to accept suitable work on March 2, 2004. After due notice was issued, a telephone hearing was held on April 16, 2004, with the claimant participating. Kelley Schreck, Personnel Manager, participated in the hearing for the employer, Northwest Services. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### 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: The employer is a temporary employment agency or staffing service. The claimant was assigned to Energizer from November 19, 2003 through December 19, 2003 and earned between \$903.00 and \$1,223.00. She satisfactorily completed that assignment. The claimant was then offered a position with another employer on January 6, 2004, which she refused. This refusal disqualified the claimant by decision dated February 20, 2004 at reference 03 and affirmed by an administrative law judge by decision dated March 26, 2004. The claimant then was offered and accepted and worked for Energizer from February 19, 2004 through February 24, 2004 earning \$256.00. The claimant satisfactorily completed this assignment being laid off on February 24, 2004. The claimant was then offered another position with Energizer on March 2, 2004 paying \$8.00 per hour for a 40-hour week or a gross weekly wage of \$320.00. This was well in excess of 100 percent of the claimant's average weekly wage of \$224.35. The claimant was offered this position on March 2, 2004, after the shift had already started. The claimant had no immediate transportation and had to refuse the offer that day. The claimant depended upon a ride with a co-worker who had also been Energizer and could not immediately arrange other transportation. Later that day, March 2, 2004, the claimant was made another offer with Energizer which she accepted and worked from March 3, 2004 to March 10, 2004 earning \$384.00. The claimant satisfactorily completed that assignment when she was laid off on March 10, 2004 and no other offers of work have been made by the employer. The employer does not contest benefits after March 10, 2004. Records indicate that the claimant had a disqualifying separation from her prior employer, Kakar, Inc. on September 19, 2003 by decision dated January 16, 2004 at reference 01. This decision was affirmed by an administrative law judge by decision dated February 18, 2004. The claimant appears to have requalified to receive unemployment insurance benefits following that disqualifying separation earning between \$903.00 and \$1,223.00 from the employer while working Energizer in 2003 and \$640.00 from the employer while working for Energizer in 2004. However, the claimant does not appear to have requalified to receive unemployment insurance benefits following her disqualifying refusal to accept suitable work on January 6, 2004 since records show only earnings of \$640.00. The claimant's weekly benefit amount is \$126.00 and ten times that amount would be \$1,260.00 in order to requalify to receive unemployment insurance benefits. The claimant is shown as being overpaid unemployment insurance benefits in the amount of \$379.13 from 2002.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is disqualified to receive unemployment insurance benefits because she refused to accept the suitable offer of work on March 2, 2004. The claimant is not disqualified to receive unemployment insurance benefits for refusing to accept suitable work on March 2, 2004.

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.

The administrative law judge concludes that the employer has the burden to prove that the claimant has refused to accept suitable work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant refused to accept suitable work on March 2, 2004. The testimony of the parties is remarkably similar. On March 2, 2004, the employer offered the claimant a position with Energizer paying \$8.00 an hour for a 40-hour week or a gross weekly wage of \$320.00. The offer was suitable in terms of the wages paid because the gross weekly wage is well in excess of 100 percent of the claimant's average weekly wage of \$224.35. However, the claimant did not accept that offer because it was made to start the same day and the offer was already made after the shift was to start and the claimant could not arrange immediate transportation. She had depended upon transportation by riding with a coworker and could not arrange other transportation and had to refuse. However, later that day March 2, 2004, the employer again offered the claimant a position with Energizer, which was also available to her co-worker and the claimant had transportation and accepted and began the next day, March 3, 2004. Because the first offer made on March 2, 2004 was for the same day and already after the shift was to start the administrative law judge concludes that that offer was not suitable even though it paid sufficient wages because the claimant had no opportunity to arrange transportation in as much as she depended upon a co-worker for transportation and the co-worker was not given

such an offer of work. The employer made a second offer on the same date to the claimant, this time involving the co-worker and the claimant accepted and performed work. The administrative law judge does not believe that the first offer was suitable and further does not believe that the claimant should be disqualified to receive unemployment insurance benefits for refusing an offer early on March 2, 2004 when it was made after the shift had already started and then accepting an offer for the same work later that day. Accordingly, the administrative law judge concludes that the first offer of work with Energizer on March 2, 2004, was not suitable and the claimant therefore did not refuse to accept suitable work and should not be disqualified to receive unemployment insurance benefits as a result. However, the claimant does not appear to be eligible to receive unemployment insurance benefits because of a disqualifying refusal to accept suitable work on January 6, 2004 by decision dated February 20, 2004 at reference 03 and affirmed by an administrative law judge dated March 26, 2004. This refusal to accept suitable work has already been litigated and is not before the administrative law judge. The claimant does not appear to have requalified since that disqualifying refusal to accept suitable work because records only show she has earned \$640.00 which is well below ten times her weekly benefit of \$126.00 or \$1,260.00.

#### DECISION:

The representative's decision of March 22, 2004, reference 04, is reversed. The claimant, Lorraine M. Maedche, is not disqualified to receive unemployment insurance benefits for a refusal to accept suitable work on March 2, 2004 because the offer first made to the claimant was not suitable. However, the claimant appears to be disqualified to receive unemployment insurance benefits pursuant to a prior refusal to accept suitable work on January 6, 2004 at reference 03 and the claimant does not appear to have requalified since that disqualifying refusal. Records show that the claimant is overpaid unemployment insurance benefits in the amount \$379.13 for 2002.

sb/b