

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LIBBIE L JOHNSON**  
Claimant

**APPEAL NO. 11A-UI-07693-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY CLINICS INC**  
Employer

**OC: 12/12/10**  
**Claimant: Appellant (1-R)**

Section 96.5(3)(a) – Refusal of Suitable Work  
Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Libbie Johnson filed a timely appeal from the May 31, 2011, reference 02, decision that denied benefits, based on an Agency conclusion that she had refused to accept suitable work with Mercy Clinics, Inc., on April 15, 2011. After due notice was issued, a hearing was held on July 7, 2011. Ms. Johnson participated. The employer in interest did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the Agency's administrative record of base period wages reported by employers for the claimant (DBRO) and benefits disbursed to the claimant (DBRO). Exhibit A was received into evidence.

**ISSUES:**

Whether the claimant refused an offer of suitable work without good cause on or about April 15, 2011.

Whether the claimant has been able to work and available for work since April 15, 2011.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Libbie Johnson is a Registered Nurse. Ms. Johnson established a claim for unemployment insurance benefits that was effective December 12, 2010. The claim was established following Ms. Johnson's December 10, 2010 separation from Allen Memorial Hospital. Ms. Johnson received benefits for the 23-week period of December 12, 2010, through May 21, 2011. These benefits included benefits for the 18-week period of December 12, 2010, through April 16, 2011.

Ms. Johnson's "base period" consists of the third and fourth quarters of 2009 and the first and second quarters of 2010. During the base period, Ms. Johnson performed work solely for Allen Memorial Hospital. Ms. Johnson's highest earnings quarter during her base period was the third quarter of 2009. For that quarter, Allen Memorial Hospital reported to Workforce Development that Ms. Johnson had earnings totaling \$12,757.69. Ms. Johnson's average weekly wage for the third quarter of 2009 was \$981.36.

During her employment at Allen Memorial Hospital, Ms. Johnson had worked the weekend package: 7:00 p.m. to 7:00 a.m., Friday through Sunday, with every fifth weekend off. At Allen Memorial Hospital, Ms. Johnson had a base wage of \$24.99 per hour plus a weekend package differential of \$12.49 per hour.

On or about April 15, 2011, Mercy Clinics, Inc., offered Ms. Johnson a full-time nursing position at Mercy West in the Des Moines metropolitan area. The offer came during the 18th week of Ms. Johnson's claim for unemployment insurance benefits. The offered position paid \$22.49 per hour with no shift differential. The hours would primarily be overnight hours. Ms. Johnson was not averse to working overnight hours and actually preferred overnight hours. At Mercy, Ms. Johnson would be scheduled for a certain number of overnight shifts, but would be expected to appear for additional shifts as needed. Ms. Johnson concluded that this "flexible" scheduling arrangement would interfere with her family life and that she needed more advance warning and predictability in her overnight shifts. Ms. Johnson was concerned with being available for her family on the weekends, despite her history of working the weekend package at Allen Memorial Hospital. Ms. Johnson rejected the offer of employment from Mercy Clinics based on the scheduling issue and the pay.

During the same week that Ms. Johnson rejected the offer of employment from Mercy, she was otherwise engaged in search for new employment. Ms. Johnson accepted an offer of full-time employment with Iowa Health Systems during the last week of May 2011, but was unable to start the employment until June 22, 2011. The delay in the start date was based on the employer's need to conduct a background check. Ms. Johnson continues in the new full-time employment at Iowa Health Systems at this time.

Ms. Johnson discontinued her claim for benefits after the benefit week that ended June 18, 2011.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Administrative Code section 24.24(15) provides as follows:

24.24(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

b. The individual's physical fitness.

c. Prior training.

d. Length of unemployment.

e. Prospects for securing local work by the individual.

f. The individual's customary occupation.

- g. Distance from the available work.
- h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.
- i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.
- j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.
- k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.
- l. Whether the individual would be required to join or resign from a labor organization.

The weight of the evidence in the record establishes that the position offered by Mercy Clinics on or about April 15, 2011 was indeed suitable work. Given the length of Ms. Johnson's claim for unemployment insurance benefits at the time of the offer, 18 weeks, the offered wage was suitable under the law if it was at least 70 percent of the \$981.36 average weekly wage Ms. Johnson earned during the third quarter of 2009. That 70 percent threshold amount was \$686.95. The \$22.49 wage offered by Mercy Clinics equated to \$809.64 to \$899.60 based on a 36- to 40-hour work week and was suitable under the law. The conditions of employment offered by Mercy Clinics, specifically the likelihood of additional overnight shifts, was certainly different from what Ms. Johnson had enjoyed in her prior employment, but did not constitute *substantially* less favorable conditions than similar work in the Des Moines metropolitan area.

Ms. Johnson's rejection of the offer of suitable employment on or about April 15, 2011 disqualified her for unemployment insurance benefits until she had worked in and been paid wages equal to ten times her weekly benefit amount, provided she was then otherwise eligible.

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. Johnson was able to work and available for work from April 15, 2011 through the benefit week that ended June 18, 2011, after which she discontinued her claim for benefits.

This matter is remanded to the Claims Division for entry of an appropriate overpayment decision concerning benefits disbursed to Ms. Johnson for the week ending April 16, 2011 through May 21, 2011.

**DECISION:**

The Agency representative's May 31, 2011, reference 02, decision is affirmed. The claimant refused an offer of suitable employment on April 15, 2011. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was able to work and available for work from April 15, 2011 through the benefit week that ended June 18, 2011.

This matter is remanded to the Claims Division for entry of an appropriate overpayment decision concerning benefits disbursed to the claimant for the week ending April 16, 2011 through the week ending May 21, 2011.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw