

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA N HILLYER
Claimant

APPEAL NO: 15A-UI-07395-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES – BURLINGTON INC
Employer

OC: 05/31/15

Claimant: Appellant (4)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Cynthia N. Hillyer (claimant) appealed a representative's June 24, 2015 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits because of a refusal of an offer of work with Temp Associates – Burlington, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 7, 2015. The claimant participated in the hearing. Jennifer Schwartz appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on March 4, 2015. She worked full time as a production worker at the employer's Mount Pleasant, Iowa business client on an assignment through May 27, 2015. The assignment ended that date due to completion of the assignment.

The claimant established an unemployment insurance benefit year effective May 31, 2015. Her average weekly wage for the high quarter of her base period was determined to be \$450.00.

On June 2 the employer offered the claimant a full-time job with another Mount Pleasant employer at a rate of \$10.00 per hour to start that day. The claimant did not give an immediate answer. That same day the claimant's mother suffered a stroke and entered a brief final illness. She therefore indicated to the employer that she could not take the position offered.

On June 5 the claimant advised the employer that her mother had passed away, but that she still needed a little bit more time, and that she would call back when she again became available for work. During this time her mother-in-law also suffered a serious illness. On June 18 she contacted the employer and indicated that she was again available for work.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code § 96.5-3-a provides in pertinent part:

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. ... 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.

Emphasis added.

The claimant's average weekly wage was \$450.00. The gross weekly wages for the work offered was \$400.00 (\$10.00 x 40). Therefore, as to the claimant in her first week of unemployment, the refusal of the offer on June 2 was not disqualifying.

Even if the offer had been deemed suitable as to the claimant, the refusal would not have been disqualifying.

Rule 871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work,

and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found available to 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." Rule 871 IAC 24.22(2). Being able and available is based upon the claimant's status for the major portion of the regular work week. Rule 871 IAC 24.22(2)h.

The claimant was not able and available for work the majority of the weeks ending June 6, June 13, and June 20, and she is therefore not eligible for benefits for those weeks. However, she is not required to requalify by earning ten times her weekly benefit amount after this period. Benefits are allowed as of June 21, 2015, if the claimant is otherwise eligible.

DECISION:

The representative's June 24, 2015 decision (reference 03) is modified in favor of the claimant. The claimant did not refuse a suitable offer of work. However, she was not able and available for work for the three-week period ending June 20, 2015. As of June 21, 2015 the claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs