

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERMA R STRATTON
Claimant

APPEAL NO. 08A-UI-05969-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 04/20/08 R: 02
Claimant: Appellant (5)

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.5(3)(A) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Erma Stratton filed a timely appeal from the June 25, 2008, reference 02, decision that denied benefits based on a May 29, 2008 refusal of suitable work. After due notice was issued, a hearing was held on July 16, 2008. Ms. Stratton participated and presented additional testimony through Gerald Stratton. Staffing Supervisor Jessica Fedders represented the employer and presented additional testimony through Senior Staffing Supervisor Alissa Finch. The administrative law judge took official notice of the Agency's record of the claimant's base period wages and of the benefits disbursed to the claimant.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment on or about May 29, 2008 without good cause.

Whether the claimant has been able to work and available for work since May 29, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Erma Stratton established her working relationship with Kelly Services in October 2006. From October 2, 2006 until April 18, 2007, Ms. Stratton worked in a full-time, temporary work assignment at E.D.S. on Army Post Road in Des Moines. Ms. Stratton lives in an area of Des Moines south of Army Post Road. From September 10, 2007 until April 1, 2008, Ms. Stratton worked in a second full-time, temporary work assignment at the same E.D.S. facility. The work paid \$8.00 per hour. The hours of employment were 7:00 a.m. to 3:30 p.m., Monday through Friday. Ms. Stratton fulfilled the terms of both assignments. Ms. Stratton relied upon her husband for transportation to and from the assignment. Mr. Stratton has at all relevant times worked 6:50 a.m. to 3:30 p.m. While Ms. Stratton worked at the E.D.S. facility, she sometimes carpooled with another employee when her husband was not available to give her a ride. Ms. Stratton has never had a driver's license and does not drive.

Ms. Stratton established a claim for unemployment insurance benefits that was effective April 20, 2008. Ms. Stratton received benefits of \$204.00 for each week during the period of April 20, 2008 through June 21, 2008.

On May 29, 2008, Senior Staffing Supervisor Alissa Finch telephoned Ms. Stratton for the purpose of offering Ms. Stratton a full-time, temporary work assignment at a Pioneer facility in Johnston. Before Ms. Finch could provide additional information about the assignment, Ms. Stratton indicated that she would be babysitting for the next couple months and could not accept other work. On the same day, a Pioneer representative telephoned Ms. Stratton and provided additional information regarding the assignment. The assignment was to begin on June 2, 2008. The work would involve rolling corn and soybean seeds into paper cones. The work would pay \$10.00 per hour and the hours would be 7:00 a.m. to 3:30 p.m., Monday through Friday. Ms. Stratton repeated to the Pioneer representative that the claimant had committed to babysitting and was not available for work. Ms. Stratton did not mention the commuting distance as a concern during her conversation with Ms. Finch or during her conversation with the Pioneer representative. The weight of the evidence indicates that Ms. Stratton was in fact providing child care services.

Ms. Stratton did not begin to look for work until June 23, 2008, the day she participated in a fact-finding interview concerning the alleged May 29 work refusal. Ms. Stratton has confined her work search to businesses that are within walking distance of her home. These have included businesses on Army Post Road and one business on Fleur Drive. Ms. Stratton's husband would not be available to transport Ms. Stratton to a work assignment in Johnston because of his own work schedule and the distance to the assignment. Ms. Stratton has been experiencing health issues since she established her claim for benefits. The timing of Ms. Stratton's separation from the E.D.S. assignment was prompted, in part, by Ms. Stratton's need to undergo surgery. In addition, Ms. Stratton was diagnosed with "walking pneumonia" on or about June 27, 2008, after six weeks with a bad cough and sore throat.

Ms. Stratton had her highest base period wages during the fourth quarter of 2007, in which she earned \$4,709.90. Ms. Stratton's average weekly wage for that quarter was \$362.00. The temporary employment assignment at Pioneer would have paid \$400.00 per week.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge notes inconsistencies between Ms. Stratton's testimony at the appeal hearing and her statements during the June 23, 2008 fact-finding interview. While Ms. Stratton testified at the hearing that the babysitting venture fell through, Ms. Stratton told the fact-finder on June 23, 2008 that she had been babysitting a few days a week. While Ms. Stratton testified at the hearing that she did not consider the distance to the assignment during her May 29 discussions with Kelly Services and Pioneer, Ms. Stratton told the fact-finder on June 23 that lack of transportation to Johnston was the main reason for declining the assignment. These inconsistencies undermine Ms. Stratton's credibility. The administrative law judge concludes that Ms. Stratton's testimony is not particularly credible.

If a person fails, without good cause, either to apply for available suitable work or to accept suitable work when offered, the person is disqualified for benefits until the person has worked in and been paid wages for insured work equal to ten times the person's weekly benefit amount, provided the person is otherwise eligible. Iowa Code section 96.5(3).

The greater weight of the evidence in the record establishes that the employer made a bona fide offer of employment to Ms. Stratton on May 29, 2008. See 871 IAC 24.24(1). The evidence

indicates that the offered employment was within Ms. Stratton's capabilities. See 871 IAC 24.24(2). The greater weight of the evidence indicates that the offered employment was suitable work. See Iowa Code section 96.5(3)(a) and 871 IAC 24.24(15). Ms. Stratton had been unemployed since April 1, 2008 and had established a claim for benefits on April 20, 2008. The employment met the wage threshold set forth at Iowa Code section 96.5(3)(a). The employment was within the Des Moines metropolitan area and was within a reasonable commuting distance. The greater weight of the evidence indicates that Ms. Stratton refused the offer of employment.

Had Ms. Stratton refused the offer of employment because she lacked transportation, she would have had good cause for refusing the offered assignment. See 871 IAC 24.3(4), below. However, Ms. Stratton did not refuse the offered assignment because she lacked transportation. Instead, Ms. Stratton refused the offered assignment because she was committed to providing babysitting services at least a few days per week, in other words, because she was not available for work.

Workforce Development rule 871 IAC 24.4(4) provides as follows:

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.

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(1)a and (2) provide:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

Where a person unduly limits her work availability because she is willing to work only in a specific area, although suitable work is available in other areas where the claimant is expected to be available for work, the claimant is ineligible for unemployment insurance benefits. See 871 IAC 24.23(18).

The greater weight of the evidence indicates that Ms. Stratton was not available for work as of May 29, 2008, the date she refused the offer of employment. Because Ms. Stratton was not available for work, the refusal disqualification does not apply. See 871 IAC 24.4(4), above. The evidence indicates that from May 29 to June 23, Ms. Stratton conducted no work search at all. Ms. Stratton asserts that this was because she had been advised by a Workforce Development representative that she did not have to look for work while she waited to be recalled to the E.D.S. assignment. The administrative law judge finds this assertion not credible. The evidence indicates that since May 29, Ms. Stratton has unduly restricted her work search to a narrow geographical area within walking distance to her home. The administrative law judge concludes that Ms. Stratton has been unavailable for work and ineligible for benefits since May 29, 2008.

The evidence indicates that Workforce Development has erroneously classified Ms. Stratton as a group "3" claimant. The evidence indicates that Ms. Stratton is not job attached and should be classified as a group "2" claimant. Ms. Stratton is required to make at least two in-person job contacts per week.

DECISION:

The Agency representative's decision dated June 25, 2008, reference 02, decision is modified as follows: The claimant was not available for work on May 29, 2008, when she refused a suitable offer of employment. Because the claimant did not meet the basic availability requirements, the refusal disqualification does not apply. The claimant has continued to not meet the work availability requirements of Iowa Code section 96.4(3) since May 29, 2008, by

not conducting a work search until June 23, 2008 and by unduly limiting her work search to the narrow geographical area within walking distance of her south Des Moines home.

The Agency shall reclassify the claimant as a group "2" claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw