

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AZRA AVDIC**  
Claimant

**APPEAL NO. 12A-UI-07554-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**Y W C A OF BLACKHAWK CO**  
Employer

**OC: 07/31/11  
Claimant: Appellant (4)**

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 21, 2012, reference 02, that concluded she had refused to apply for suitable work. A telephone hearing was held on July 18, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Lucinda Mohr participated in the hearing on behalf of the employer with a witness, Mindy Sternhagen. The record was left open for the claimant's doctor to submit information regarding the claimant's ability to work. Doctor statements were submitted by Ahsan Maqsood, M.D., (Exhibit A) and Michael Slavin, D.O. (Exhibit B). The proposed exhibits were sent to the claimant and the employer for objections. As no objections were made by the deadline of October 3, 2012, the exhibits are entered into evidence.

**ISSUES:**

Did the claimant fail to accept an offer of suitable work without good cause?  
Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant filed a claim for unemployment insurance benefits effective July 31, 2011. Her average weekly wage based on her highest quarter of earnings was \$351.78.

The claimant worked in the employer's childcare program from August 29, 2007, to May 25, 2012. During the school year, the claimant worked in the employer's before-and-after school program as an onsite supervisor. Her final rate of pay was \$8.75 per hour for up to 40 hours per week. May 25, 2012, was the last day for the before and after school program. Up until 2012, the claimant had also applied for and was hired to work in the employer's summer childcare program as a program assistant. Employees are required to apply each year to work in the before and after school program and summer childcare program. No one is guaranteed a position when they apply for the programs.

In April 2012, the claimant applied for her school-year position as onsite supervisor. She did not apply for the program assistant job for the summer because the job was more physically

demanding and she was experiencing some back problems. She also had conflicts in the past with the college students who work in the summer program. The summer job paid \$7.25 per hour. The claimant probably would have been hired for the program assistant job if she had applied. There also was a group leader position in the summer program that paid \$8.50 per hour and was less physically demanding, but the assistant director of childcare had told the claimant in the past that she did not believe she was prepared for the job so she did not apply. Even if she had applied, there were more applicants than positions and she may not have been hired.

The claimant filed an additional claim for unemployment insurance benefits effective May 27, 2012.

The claimant was hospitalized during the week of June 18 and was discharged on June 21, 2012. Other than that week, the claimant was able to perform her job duties as a childcare onsite supervisor as certified by her treating physicians.

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

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

First, the law imposes no disqualification on a claimant for failing to apply for work, unless the claimant was directed by the department to apply for the job. Since Iowa Workforce Development never directed the claimant to apply for the program assistant job and no actual job was offered to the claimant, she is not subject to disqualification under Iowa Code Section 96.5-3-a. Second, in any event the job would not be deemed suitable because the job did not pay 100 percent of the claimant's average weekly wage under Iowa Code Section 96.5-3-a-1.

The next issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, other than during the week of her hospitalization. She is ineligible for benefits for the week ending June 23, 2012.

**DECISION:**

The unemployment insurance decision dated June 21, 2012, reference 02, is modified in favor of the claimant. She is qualified for benefits effective May 27, 2012, provided she is otherwise eligible. She is ineligible for benefits for the week ending June 23, 2012

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs