

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA K LEU

Claimant

APPEAL NO. 09A-UI-03992-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND HOME CARE INC

Employer

**Original Claim: 02/10/08
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Heartland Home Care, Inc. (employer)) appealed a representative's March 9, 2009 decision (reference 03) that concluded Angela K. Leu (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2009. The claimant participated in the hearing. Brenda Wilhelm 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 without good cause?

Was the claimant able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on February 25, 2008. She worked full time as a licensed practical nurse (LPN) for clients through the employer's pediatric home health care service. For virtually the entire time between February 25, 2008 and February 2, 2009, the claimant worked nearly exclusively at a particular client's home in Mount Pleasant, Iowa, the same city in which the claimant lived, on a schedule of 7:00 a.m. to 5:00 p.m. The claimant was excused from working on that assignment on February 3 due to a staff meeting, and was taken off that assignment permanently as of February 4 due to the client family's request.

On February 4, the employer indicated that there were two other options of client assignments for the claimant: an assignment in Keokuk, approximately 45 miles away from Mount Pleasant, working 7:30 a.m. to 7:30 p.m., or an assignment in Washington, approximately 35 miles from Mount Pleasant, working some nights from 10:30 p.m. to 5:00 a.m. and some days from 7:45 a.m. to 5:45 p.m. The claimant declined both of these assignments due to the distance and the hours, as she had her own children for whom she did not have coverage for shifts going into the evening or overnight.

On February 5 and February 6, the employer made additional attempts to contact the claimant to discuss other assignments, but while the employer left messages for the claimant, the claimant did not get the messages. The employer then sent the claimant a letter regarding other work, which she received on February 13, which is the subject of a different representative's decision and appeal, and therefore not further addressed in this decision.

REASONING AND CONCLUSIONS OF LAW:

In order to be eligible for unemployment insurance benefits, the claimant cannot, without good cause, refuse a suitable offer of work. Iowa Code § 96.5-3-a. Factors in making this determination include the length the claimant has been unemployed and the distance from the available work. *Id.*; 871 IAC 24.24(15). Given that the claimant had only been unemployed a day and the comparably further distance to take the other work offered on February 4, the claimant's refusal of that work was not disqualifying.

As to any work that potentially could have been offered on February 5 or February 6 had the claimant received the messages from the employer, 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant. In this case, there was no bona fide offer of work and no definite refusal of work on February 5 or February 6. Benefits are allowed, if the claimant is otherwise eligible.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. As to the claimant's failure to be available for work for the overnight shifts that were available for her, "If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work." 871 IAC 24.22(2)a. Similarly, as to the claimant's desire to remain in the geographic area of Mount Pleasant, a geographic restriction will not result in a conclusion that the claimant is not able and available for work unless the restriction is such as to leave "no reasonable expectation of securing employment." 871 IAC 24.22(2)m. The claimant was adequately able and available for work for the week ending February 7, 2009. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's March 9, 2009 decision (reference 03) is affirmed. The claimant is not disqualified for refusing a suitable offer of work without good cause during the week ending February 7, 2009. She was able and available for work that week. 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/kjw