

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY E SONDERLEITER

Claimant

APPEAL NO. 08A-UI-10337-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NURSEFINDERS OF DES MOINES

Employer

**OC: 09/14/08 R: 02
Claimant: Respondent (2)**

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Nursefinders, filed an appeal from a decision dated October 22, 2008, reference 02. The decision allowed benefits to the claimant, Mary Sonderleiter. After due notice was issued, a hearing was held by telephone conference call on November 25, 2008. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Branch Director Mike Adams. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant refused an offer of work.

FINDINGS OF FACT:

Mary Sonderleiter began employment with Nursefinders beginning November 20, 2007 as a certified nursing assistant. She was on maternity leave of absence in the summer of 2008 and was released to return to work by her doctor effective August 26, 2008.

Since that time, the claimant has refused two offers of work. On October 1, 2008, she refused because she was in school. The employer has not received any information from her regarding her class schedule or the exact course of schooling she is attending. She did not convey any specific information about her availability.

On October 31, 2008, she was offered a position and said she would call back but never did. She is not eligible for assignments from Nursefinders as of November 20, 2008. This is because she has not updated her OSHA credential this year, and this certification is required of anyone seeking assignments through the employer.

Mary Sonderleiter has received unemployment benefits since filing a claim with an effective date of September 14, 2008.

REASONING AND CONCLUSIONS OF LAW:

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. 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. 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.

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

The claimant refused two offers of work from the employer. She did not participate in the hearing to provide information as to why she refused the work, her current availability for work due to her schooling, and the status of her OSHA certification. The record therefore establishes the claimant refused an offer of work and is disqualified effective with the week ending November 1, 2008.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 22, 2008, reference 02, is reversed. Mary Sonderleiter is disqualified effective the week ending November 1, 2008. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw