

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LINDA HARRIS
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A & P FOOD EQUIPMENT
654 CEDAR BEND
WATERLOO IA 50703

Appeal Number: 04A-UI-09699-SWT
OC: 08/01/04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 August 27, 2004, reference 02, that concluded the claimant had failed to accept a recall to suitable work without good cause. A telephone hearing was held on September 30, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Schwake participated in the hearing on behalf of the employer. Exhibit A was admitted into the record at the hearing. The record was left open for the claimant to submit medical documentation that she was not released to return to work until October 8, 2004. Exhibit B was sent from the Black Hawk - Grundy Mental Health Center. Exhibit B was mailed to the employer for objections. The employer objected to Exhibit B on the grounds that the employer had not received the work release from the claimant in 2003 when the offer of work was made. The employer's objections are overruled, and Exhibit B is admitted as part of the evidence.

FINDINGS OF FACT:

The claimant worked for the employer as a secretary and dispatcher from July 27, 1998 to July 18, 2003. After July 18, 2003, the claimant was placed on a temporary layoff by the employer based on some mental health problems she was experiencing. The claimant had submitted to the employer a certificate for return to work dated August 6, 2003, from the Black Hawk - Grundy Mental Health Center stating that the claimant had been under the care of the Center from "July 21, 2003, to present and is able to return to work on Sept, 2003." The form listed her mental health problems as limitations. Both the claimant and the employer understood that the document took the claimant off work through the end of September 2003.

In late September 2003, the employer's secretary/treasurer, Mary Schwake, contacted the claimant and recalled her to her previous job at the same rate of pay and hours starting October 1, 2003. The claimant informed Schwake that she did not feel she was mentally stable enough to return to work. Schwake informed her that they needed her to return to work by October 1, 2003, because they had hired a worker through a temporary agency and had to either lay her off or hire her permanently by October 1, 2003.

The claimant tried to get an appointment with Black Hawk - Grundy Mental Health Center but the earliest she could get in was October 8, 2003. She did not inform the employer about the fact that she could not get in at the clinic until October 8. Black Hawk - Grundy Mental Health Center released her to return to work on October 8, 2003. She contacted the employer but was informed that she had been replaced since she had not returned to work or contacted them before October 1, 2003.

The claimant refused work offered by the employer because she believed she was not able to return to work.

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. . . . 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.

Both parties understood that the medical release took the claimant off work through the end of September 2003. The employer acted reasonably by recalling the claimant to work effective October 1, 2003. The work was the claimant's former job with the same rate of pay and hours so the work met all the criteria for suitable work found in the statute. In order to show the work was not suitable, the claimant would need to present proof that she was unable to work as of October 1, 2003. The statement prepared by the clinic states that she was "given permission to return to work as early as 10/8/03." The statute, however, does not answer the question of "as the claimant unable to return to work on October 1, 2003." As a result, the claimant has not proven that the work offered was unsuitable or that she had good cause to refuse the job. She knew the employer had a deadline but did not keep the employer informed of her problems in getting a medical appointment. The employer was not requiring the claimant to submit another medical release and believed that the document that they had released her after September 2003.

DECISION:

The unemployment insurance decision dated August 27, 2004, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits effective September 28, 2003, and continuing until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/s