

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CANDI VARGAS**  
Claimant

**APPEAL NO. 06A-UI-10721-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USA STAFFING INC**  
Employer

**OC: 10-01-06 R: 02**  
**Claimant: Respondent (1)**

Section 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 31, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing. Brandon Rost, Branch Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant refused a suitable offer of work.

**FINDINGS OF FACT:**

The employer made an offer of work to the claimant on October 10, 2006. That offer included the following terms: A part-time banquet server at Wells Fargo Arena working weekends from 2:30 p.m. to 12:30 a.m. at \$9.98 per hour. The claimant's average weekly wage is \$396.02. The offer was made in the second week of unemployment. The claimant refused the offer because she did not believe she could secure childcare for those hours.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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's last assignment was as a full-time, second-shift production worker/laborer at Lennox Manufacturing in Marshalltown earning \$10.05 per hour. She was laid off from that assignment and the employer offered her a part-time banquet server position in Des Moines. The offer was unsuitable, however, because the part-time position did not meet the minimum wage requirements set out above for an offer to be considered suitable. Therefore, benefits are allowed.

**DECISION:**

The October 31, 2006, reference 02, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/cs