

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KATHLEEN M SERNETT
Claimant

APPEAL NO: 18A-UI-08606-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 06/03/18
Claimant: Appellant (2)

Section 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 6, 2018, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 31, 2018. The claimant participated in the hearing. Steven Burns, Assistant General 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 claimant applied for full-time work at Menards, Inc. July 6, 2018, and the employer made an offer of work to the claimant on July 6, 2018. That offer included the following terms: A part-time sales position earning \$11.00 per hour in the cabinet and appliance department. The claimant's average weekly wage is \$567.82. The offer was made in the fifth week of unemployment. The claimant declined the offer because it was not full-time work and she would be required to drive 78 miles round trip. She accepted a full-time position with Pocahontas Elementary School beginning August 22, 2018, as a teacher's associate.

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, regardless of the source of the individual's wage credits:

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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

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

The administrative law judge finds the employer's offer was unsuitable as it did not meet the claimant's minimum wage requirements set out above for an offer to be considered suitable. Additionally, the claimant applied for full-time work and the employer offered her a part-time position. It was not feasible for the claimant to drive 78 miles round trip for a part-time job. Under these circumstances, the administrative law judge must conclude the claimant had a good cause reason for her refusal of this position. Therefore, benefits must be allowed.

DECISION:

The August 6, 2018, reference 05, decision is reversed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn