

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A SANDERSON
Claimant

APPEAL NO. 09A-UI-01508-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONGHOUSE NORTHSHIRE LTD
Employer

OC: 12/21/08 R: 01
Claimant: Respondent (1)

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 employer appealed an unemployment insurance decision dated January 23, 2009, reference 01, that concluded the claimant was not subject to disqualification for failing to accept work offered on October 31, 2008. A telephone hearing was held on February 19, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Tim Christy participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing. The employer sent in a information about the claimant's rate of pay after the hearing. In light of my decision in this case, this information is not entered into evidence.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant was hired by the employer as a food service supervisor in September 2004 and worked in that capacity until November 7, 2008. She was terminated from that position because she was unable to complete the courses necessary to be a qualified dietary supervisor under Department of Inspections and Appeals rules.

Before the claimant was terminated, the administrator, Tim Christy, offered the claimant two other jobs on October 31, 2008—a cook position and a dietary aide position. The claimant declined the position because she had been injured at work and did not believe she could perform the physical requirement of the jobs.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 21, 2008. The employer has not offered the claimant any work since she filed for unemployment insurance benefits. When the claimant filed for unemployment insurance benefits, she had limitation of no lifting over 15 pounds, no lifting overhead, and no jobs involving complex tasks. The claimant has a bachelor's degree in psychology and counseling.

There was jobs in the labor market that the claimant can perform despite her limitation. The claimant had received a settlement of worker's compensation benefits, but has not received any temporary total disability benefits since she filed for unemployment insurance benefits.

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....

The unemployment insurance rules state both the offer of work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. 871 IAC 24.24(8).

The offer of work was made on October 31, 2008, which is before the claimant filed her claim to establish her benefit year. The employer has not offered the claimant any work since she filed for unemployment insurance benefits. No disqualification can be made under Iowa Code section 96.5(3).

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting or complex decision making. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated January 23, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css