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

**WINDY N NEVILLE**
Claimant

**APPEAL NO: 13A-UI-07529-DWT**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE KLUB**
Employer

**OC: 05/26/13**
**Claimant: Respondent (2)**

Iowa Code § 96.5(3)a – Refusal of Offer of Work
Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 17, 2013 determination (reference 01) that held the claimant eligible to receive benefits as of May 26, 2013, because the employer had not made a valid offer of work to the claimant. The claimant did not respond to the hearing notice or participate in the hearing. Brian Tubbs, attorney at law, represented the employer. Jonathan Miller, a board member, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits as of May 26, 2013.

**ISSUES:**

Did the claimant refuse an offer of suitable work without good cause?

Is the claimant overpaid any benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer as a full-time cook in late November 2012. In late May 2013, the employer eliminated the claimant's cook position for business reasons. The employer offered the claimant continued employment as a server.

As a cook the claimant started working at 9 or 10 a.m. and worked until 3 or 4 p.m. Sometimes the claimant worked 4 p.m. to midnight. She earned $12 an hour as a cook.

The employer asked the claimant if she would work as a full-time server and she could choose any shift she wanted to work. As a server, the claimant would earn a base wage of $3.50. With tips, the employer's servers averaged $12 to $15 an hour.

The employer understood the claimant was upset when the employer eliminated her cook position. The claimant declined the employer's offer to work as a server.

The claimant established a claim for benefits during the week of May 26, 2013. The claimant has filed for and received benefits for the weeks ending June 1 through August 17, 2013. She received her maximum weekly benefit amount of $224.00 for each of these weeks. The claimant's average weekly wage during her high quarter on this claim is $380.00.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she refuses an offer of suitable work without good cause. Iowa Code § 96.5(3)a. The employer established that the server position was suitable for the claimant. The evidence indicates the employer made a valid offer to the claimant. Since the claimant did not participate at the hearing, the evidence does not establish that she had good cause to decline the employer's offer of work. As a result, the claimant is not qualified to receive benefits as of May 26, 2013.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Since the claimant is not qualified to receive benefits as of May 26, 2013, she has been overpaid a total of $2,688.00 in benefits she received for the weeks ending June 1 through August 17, 2013. The claimant is required to pay back this amount to the Department.

**DECISION:**

The representative's June 17, 2013 determination (reference 01) is reversed. The employer offered the claimant a suitable job that she declined without good cause. The claimant is disqualified from receiving unemployment insurance benefits as of May 26, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid $2,688.00 in benefits she received for the weeks ending June 1 through August 17, 2013. She is required to pay back this amount to the Department.


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Debra L. Wise
Administrative Law Judge


_____
Decision Dated and Mailed


dlw/pjs