

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH GOMEZ**

Claimant

**APPEAL NO: 10A-UI-12082-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL STAR DAYCARE INC**

Employer

**OC: 08 /17/10**

**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available

Section 95.5-3-a – Job Refusal

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 17, 2010, reference 01, that held it failed to offer suitable work to claimant on May 12, 2010, and benefits are allowed. A telephone hearing was scheduled for October 13, 2010. The claimant and employer did not participate.

The claimant was not available when called for the hearing. The employer failed to respond to the hearing notice.

**ISSUES:**

Whether the claimant refused a recall to suitable work.

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: The claimant worked for the employer until April 5, 2010 when she suffered an injury. The employer replaced the claimant with another employee on April 23. When the claimant returned to the employer upon recovering from her injury on May 12, there was no work made available to her.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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 administrative law judge concludes claimant is not disqualified from receiving benefits on May 12, 2010, as she was able and available for work, and the employer did not offer her employment upon her recovery and return to work.

**DECISION:**

The department decision dated August 17, 2010, reference 01, is affirmed. The claimant is not disqualified May 12, 2010, because she was able and available for work, and the employer made no offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs