

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAVONNE L ADOLFS
Claimant

APPEAL NO. 20A-UI-08405-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 03/29/20
Claimant: Respondent (1)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 7, 2020, reference 01, decision that allowed benefits, provided the claimant was otherwise eligible, based on the deputy's determination that the claimant did not have a claim for benefits at the time the claimant did not accept a September 30, 2020 offer of work. After due notice was issued, a hearing was held on August 27, 2020. Claimant LaVonne Adolfs was initially present for the hearing, but left prior to the presentation of evidence. Brian Moussalli represented the employer and presented additional testimony through Jennifer Norton. Exhibits 1 through 6 were received into evidence. The administrative law judge took official notice of the Agency's administrative record concerning the effective date of the claimant's benefit year and the absence of earlier claims.

ISSUE:

Whether the claimant had a claim for unemployment insurance benefits at the time the claimant did not accept a September 30, 2020 offer of work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: LaVonne Adolfs established an original claim for benefits that was effective March 29, 2020. Ms. Adolfs has not made any weekly claims and has not received any benefits in connection with the claim. Ms. Adolfs had no unemployment insurance claims prior to March 29, 2020. On September 30, 2019, employer DES Staffing Services, Inc. offered Ms. Adolfs a work assignment that was located 25 to 30 minutes from Ms. Adolfs' home. Ms. Adolfs declined the position, based on the driving distance. Ms. Adolfs did not have a claim for unemployment insurance benefits at the time she declined the September 30, 2019 offer of work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

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. (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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for 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. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Ms. Adolfs' September 30, 2020 work refusal occurred long before Ms. Adolfs established the benefit year that was effective March 29, 2020. Because the offer and refusal occurred when there was no claim for benefits, the refusal cannot serve as a basis for disqualifying Ms. Adolfs for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

DECISION:

The July 7, 2020, reference 01, decision is affirmed. The claimant did not have a claim for unemployment insurance benefits at the time the claimant did not accept a September 30, 2020 offer of work. The refusal does not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

September 1, 2020
Decision Dated and Mailed

jet/sam