

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN E PEREZ

Claimant

APPEAL 17A-UI-03764-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

OC: 01/01/17

Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the March 27, 2017, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 1, 2017. Claimant participated. Employer participated through district manager Lori Smith and senior staffing supervisor Melissa Mitchell. Official notice was taken of the administrative record, including claimant's wage history and benefit payment history, with no objection.

ISSUES:

Was a suitable offer of work made to the claimant? If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer is an employment service agency. The employer made two offers (assignments) of work to claimant via the phone on March 7, 2017. The first offer included the following terms: mailroom clerk position (involved standing, moving, and lifting), 7:00 a.m. to 4:00 p.m., Monday through Friday, 40 hours per week. The wage offered for the job was \$11.50 per hour (\$460.00 per week). The assignment was with Ruffalo Noel Levitz in Cedar Rapids, Iowa. Claimant rejected this offer of work. Claimant told the employer she could not physically do the work because of her bad knees. Claimant did not provide the employer with a doctor's note with work restrictions.

The second offer included the following terms: outbound calling position (telemarketing), \$10.00 per hour if she worked less than 39.5 hours; however, if she worked 39.5 hours the wage was \$12.00 per hour for the 39.5 hours, Sunday (noon to 6:00 p.m.), Monday through Thursday (3:00 p.m. to 9:00 p.m.), plus optional hours on Monday through Saturday to reach 39.5 hours, at Ruffalo Noel Levitz in Cedar Rapids, Iowa. If claimant worked 39.5 hours at \$12.00 per hour, her weekly wage would have been \$474.00.

Claimant filed her initial claim with an effective date of January 1, 2017. Claimant then filed an additional claim with an effective date of March 5, 2017. Claimant's average weekly wage is

\$536.54. Both offers were made during the first five weeks since she filed an additional claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer of work was not suitable.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Iowa Code § 96.5(3) 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. (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 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.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

Both offers the employer made to claimant on March 7, 2017 were made during the first five weeks after she filed an additional claim for benefits. Both offers were for a weekly wage below her average weekly wage (\$536.54). Therefore, both offers were unsuitable, as they did not meet the wage requirements set out above for the offers to be considered suitable. Benefits are allowed.

DECISION:

The March 27, 2017, (reference 01) decision is affirmed. Both offers of work made to claimant were not suitable. Benefits are allowed, provided claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs