

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RENE J BOLSINGER
Claimant

KELLY SERVICES INC
Employer

APPEAL 20A-UI-01670-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/20
Claimant: Respondent (1)

Iowa Code § 96.4-3 – Able and Available for Work
Iowa Code § 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Kelly Services (employer) appealed a representative's February 17, 2020, decision (reference 09) that concluded Rene Bolsinger (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 11, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Amy Dugenske, Recruiter, and Lori Smith, Engagement Manager.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired as a temporary full-time specialist assigned to work at TransAmerica from September 9, 2019, to October 23, 2019.

The claimant filed a claim for unemployment insurance benefits on January 5, 2020. Her average weekly wage during her highest quarter was determined to be \$575.31 or \$14.38 per hour. On January 16, 2020, and January 27, 2020, the employer sent the claimant emails with job opportunities. If the claimant wanted to pursue the opportunities, the employer would put the claimant's name forward with the employers. The employers would then decide whether to extend an offer of work to the claimant.

The claimant did not want to apply for the January 16, 2020, opportunity because she would have to drive eighty miles, round trip, to work. The claimant dismissed one of the opportunities on January 27, 2020, because it paid \$13.00 per hour. The employer placed the claimant's name in contention for the second job opportunity mentioned in the January 27, 2020, email. The claimant was not selected for the position.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant refused an offer of suitable work. For the following reasons the administrative law judge concludes she did not.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the

claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The first offer of work, on January 16, 2020, required the claimant to travel from her hometown of Hiawatha, Iowa, to West Branch, Iowa. This distance of more than forty miles would have necessitated the claimant to work outside the area where she resided. The law indicates that not living in the area where the job is offered is good cause for job refusal.

The work was offered within the first five weeks of the claimant's unemployment and was required to provide the claimant wages one hundred percent of those paid to the claimant during the highest quarter of her base period. The first offer on January 27, 2020, did not meet this requirement. The evidence fails to establish that the claimant would have received at least one hundred percent of her average weekly wages during her highest quarter of earnings.

The claimant's name was submitted for the second job on January 27, 2020, and her name was not selected for a position. Based on the factors found in Iowa Code Section 96.5-3-a and Iowa Admin. Code r 871-24.24(7), the work offered to the claimant on January 16, 2020, and the first offer on January 27, 2020, was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's February 17, 2020 decision (reference 09) is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs