

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER L PACHECO
Claimant

VERA FRENCH COMMUNITY MENTAL HEA
Employer

APPEAL NO. 21A-UI-15484-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 7, 2021, reference 02, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on September 1, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibits A-D were admitted into evidence.

ISSUES:

Whether claimant refused to accept a suitable offer of work?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer made an offer of work to the claimant on August 5, 2020. That offer included the following terms: Claimant would be paid the same wages as previously, but would now be asked to work 12 months out of the year as opposed to the nine months included on the original job offer. Claimant would additionally be asked to work an evening every week, and would be asked to do home visits. Claimant had been a school therapist working during the school year only and working only at schools during the school day. Claimant refused the offer of work because the job offered was dramatically different from the job she'd been hired to do.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

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.

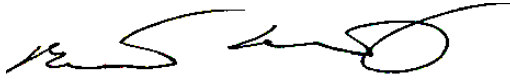
(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The purpose of the work refusal statute is to eliminate those situations when an employer is attempting to get claimant to work, and offering a reasonable salary in light of the time off from work, and offering reasonable work. If it the same employer offering the work, the work has to be reasonably like the work done before. Here, employer laid off claimant in March, and made no attempt to call claimant back to work until the following school year. Not only was employer's offer completely changing claimant's work year - from nine months to twelve months - but the offer required nighttime work, and home visits - neither of which were included on the job description used to hire claimant. These changes create a different position than the one claimant had been hired to work. Her work refusal does not disqualify her from the receipt of benefits.

At all times relevant, claimant remained able and available for work.

DECISION:

The decision of the representative dated July 7, 2021, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

September 9, 2021
Decision Dated and Mailed

bab/scn