

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAJOR, BRANDIE, R
Claimant

APPEAL NO. 10A-UI-14380-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARETECH INC
Employer

**OC: 08/01/10
Claimant: Respondent (1)**

871 IAC 24.1(113) – Layoff
Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 14, 2010, reference 01, decision that allowed benefits effective August 1, 2010 based on an Agency conclusion that the claimant was laid off on July 23, 2010. After due notice was issued, a hearing was held on November 30, 2010. Claimant participated. Jason Velinsky represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The parties waived formal notice on the issues of whether the claimant had refused suitable work without justification and whether the claimant has been able and available for work since establishing her claim for benefits.

ISSUES:

Whether the claimant separated from the employment for a reason that would disqualify her for unemployment insurance benefits.

Whether the claimant refused to accept suitable work without justification.

Whether the claimant has been able to work and available work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a part-time in-home caregiver from 2003 and last performed work for the employer on June 30, 2010. Throughout that time, the claimant's only client was her mother. The claimant provided 32 to 36 hours of assistance each week. The claimant's mother moved out of state on June 30, 2010. The employer laid the claimant off. The employer told the claimant she would be placed on a waiting list for new clients and that the employer would be in contact with her.

The employer telephoned the claimant on July 22, 2010 and left a message inquiring whether the claimant would be willing to meet with a client about providing 2-3 hours of service to the client per week. The employer requested that the claimant contact the client. Later that same day, the claimant received word from a friend about a part-time position that would offer the claimant 15-20 hours per week. Claimant applied for the position and participated in an interview. On July 23, the employer contacted the claimant to see whether she had made arrangements to meet with the client. Claimant said she had not and would have to decline the client being offered at that time because she had an offer for a position that would give her 15-20 hours per week. Later that day, the claimant learned from her friend that the 15-20 hour per week position was not going to be filled after all. The claimant did not notify the employer of this, but the claimant had not told the employer she would accept no clients.

The next contact came on September 13, 2010, when the claimant contacted the employer to ask whether the employer had any clients for her. The employer did not and asked what happened with the 15-20 hour per week job. The claimant told the employer that position had fallen through.

The next contact came on September 24, 2010, when the employer contacted the claimant about providing three hours of service per week to a particular client. The employer told the claimant that the client was married, had children, had dogs, and was a smoker. The claimant suffers from asthma. The claimant declined working with the client due to the small number of hours been offered and also due to the client's cigarette smoking.

The claimant commenced a search for new employment in the middle of July 2010 and has looked for work in the Council Bluffs and Omaha area. The claimant initially delayed filing a claim for unemployment insurance benefits while she conducted her work search. Claimant established a claim for unemployment insurance benefits that was effective August 1, 2010 and has consistently through December 11, 2010. The claimant has made three to five job contacts per week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence in the record establishes that the claimant was laid off effective June 30, 2010. A layoff would not disqualify the claimant for unemployment insurance benefits. Instead, the claimant would be eligible for benefits, provided she was otherwise eligible, and the employer's account could be charged for benefits.

The administrative law judge will next address the work refusal issue. A person who refuses suitable work without good cause at a time when they are receiving unemployment insurance benefits is disqualified for benefits until they have worked in and been paid wages equal to ten times their weekly benefit amount, provided they then otherwise meet the eligibility requirements. See Iowa Code section 96.5(3). The weight of the evidence in the record establishes that the claimant had good cause for declining the client offered on July 22, 2010 and the client offered on September 24, 2010. With regard to the July client, the claimant was unavailable to accept the client at that time because she was in the process of applying for another position. The claimant unavailability on July 22-23 to accept that particular client and the minimal hours involved would not disqualify the claimant for unemployment insurance benefits. The claimant declined the September client in part because the client was a smoker and the claimant suffers from asthma. This constituted good cause for declining the client. Neither refusal would disqualify the claimant for benefits.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence establishes that that claimant has been able and available for work since she established her claim for benefits. The claimant has made three or more contacts per week. The claimant's earnest search for new employment is indicated in part by the claimant's attempt to secure new employment on July 23, 2010, prior to filing her claim for benefits and by the claimant's contact with the employer on September 13 to inquire about further clients.

DECISION:

The Agency representative's October 14, 2010, reference 01, decision is affirmed. The claimant was laid off June 30, 2010 and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged. The claimant refused an offer of employment on July 23, 2010 and on September 24, 2010, but did so for good cause. The refusals did not disqualify the claimant for benefits. The claimant has been able and available for work since establishing her claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css