

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YUPHADEE NEWBERN
Claimant

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

APPEAL 21A-UI-16899-CS-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5(3)a – Failure to Accept Work
871 IAC 24.24(15)i – Suitable Work

STATEMENT OF THE CASE:

On August 2, 2021, Yuphadee Newbern (claimant) appealed a representative's July 30, 2021, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she refused suitable work with Prairie Meadows Racetrack & Casino (employer). The parties were properly notified of the hearing. A telephone hearing was held on September 22, 2021. The claimant participated at the hearing. The employer participated through Loss and Prevention Manager and Human Resources, Pam Anderson. Exhibit A was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUE:

Did the claimant refused suitable work?
Is the claimant able to 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 that: The claimant was hired on November 30, 2015 as a full-time line cook. Claimant worked 6:30 a.m. until 3:30 p.m. Claimant had Tuesdays and Wednesdays off. Claimant was paid \$14.00 an hour and received benefits

Claimant was laid off from work on March 16, 2020. On April 12, 2021, at 2:30 p.m. the employer attempted to call the claimant and offer her the same position that she had prior to her lay off. Claimant would be paid the same amount but the shift would be from 2:00 p.m. through 10:00 p.m. When the employer called the claimant they did not speak to her and claimant's voicemail was full so they could not leave a message communicating the job offer.

On April 13, 2021, at 11:00 a.m. the employer attempted to call the claimant again to offer her the job. Again the employer was not able to reach the claimant and the employer could not leave a

voicemail because claimant's voicemail was full. The employer did not attempt to contact the claimant in any other manner. The employer officially terminated the claimant on April 13, 2021, for a work refusal.

REASONING AND CONCLUSIONS OF LAW:

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

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.

In this case a bona fide offer of work was never communicated to the claimant. The employer did not make personal contact with the claimant to communicate the job offer. As a result the claimant could not refuse the job offer because she did not know about it. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 30, 2021, decision (reference 02) is REVERSED. The claimant is qualified to receive unemployment insurance benefits if she is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 28, 2021
Decision Dated and Mailed

cs/mh