

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ANGELA J CREMER

Claimant

and

CHG HEALTHCARE SERVICES

Employer

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HEARING NUMBER: 16B-UI-07767

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES IN PART, AND AFFIRMS IN PART** as set forth below.

FINDINGS OF FACT:

Angela Cremer (Claimant) last performed services for CHG Healthcare Services (Employer) on May 30, 2016 when she completed a work assignment through CHG Healthcare Services at a client medical facility. Ms. Cremer worked as a registered traveling nurse and routinely accepted long-term assignments at various geographic locations in the United States.

On or about May 25, 2016, the Claimant was offered another nursing position through CHG Healthcare Services at a medical facility located in Hannibal, Missouri. The claimant was offered the position as a progressive care unit nurse at the rate of \$23.00 per hour plus \$280.00 per week per diem. This amount equaled Claimant's average weekly wage during her highest quarter in her base period.

Ms. Cremer accepted the assignment. In order to work the position the Claimant was required to pass a cardiac knowledge test. She failed the test twice, and declined the opportunity to take the test a third time with contemporaneous assistance offered by a nursing supervisor. She viewed the offer of assistance to be of questionable ethics.

The Claimant was needed to provide nursing care for her father at home. The Claimant has then established a number of limitations on the work that she would accept in the future including a sharp reduction in the radius of miles for assignments that she would accept, the specific type of nursing involved, patient ratios, hours, and had a preference for employment primarily on general surgical floors only.

REASONING AND CONCLUSIONS OF LAW:

Able & Available: We affirm the Administrative Law Judge's ruling on the Claimant's availability and adopt the Administrative Law Judge's Reasoning and Conclusions of Law to the extent that they bear on availability. The bottom line is that "[a]n individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions." 871 IAC 24.22(2)(m).

Refusal of Suitable Work:

Iowa Code section 96.5-3-a 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.....

a. 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:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

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

The Department of Workforce Development has promulgated rules addressing refusal of suitable work which provide in relevant part:

871—24.24 Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

.....

24.24(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.

Where the claimant actually refuses work, as opposed to not applying for work, the refusal of suitable work question involves whether the work was "suitable" and, if so, whether the refusal was for "good cause". In *Pohlman v. Ertl Co.*, 374 N.W.2d 253 (Iowa 1985) the Supreme Court placed the burden of proof on good cause on the claimant. Subsequently in *Norland v. Iowa Department of Job Service*, 412 N.W.2d 904, 910 (Iowa 1987) the Court ruled that the employer had the burden of proving suitability of the offer. On the issue of suitability the Employer has a burden of putting on a *prima facie* case. The Claimant has a burden to identify the suitability factors at issue, at least as to some of them. *Norland v. IDJS*, 412 N.W.2d 904, 911 (Iowa 1987). If the employer proves that a suitable offer was made and refused, then the claimant can avoid disqualification by showing that the refusal was for good cause. Suitability of an offer is a fact issue that must be resolved "in light of those facts peculiar to each given case." *Norland v. IDJS*, 412 N.W.2d 904, 912 (Iowa 1987). "The question of good cause, like that of suitability, is a fact issue within the discretion of the department to decide." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

We find that the Claimant did not definitely refuse suitable work. She failed the exam twice. She thus clearly was willing to take the job if she could pass the requisite exam. She could not. We do not think refusing the offer of questionable assistance with the third test amounts to "a definite refusal" by the Claimant. We thus reverse the finding that the Claimant refused suitable work without good cause, and thus also remove the disqualification based on Iowa Code §96.5(3)(b).

DECISION:

The administrative law judge's decision dated August 26, 2016 is **REVERSED ON THE ISSUE OF REFUSAL SUITABLE WORK**. The Employment Appeal Board concludes that the Claimant did not refuse suitable work without good cause. Accordingly, the Claimant is not disqualified based on a refusal of suitable work and the requirement that she requalify by earning ten times her weekly benefit amount is lifted. The administrative law judge's decision dated August 26, 2016 is **AFFIRMED ON THE ISSUE OF AVAILABILITY** for work. The Claimant is thus not eligible to collect benefits so long as she imposes the same restrictions on the type of work, and the conditions of the work which she will accept. The upshot of today's ruling is that the Claimant will not be able to collect benefits but only so long as the restrictions on work she has imposed persist. If the Claimant significantly broadens the work, including the type of work, which she is willing to accept, then she should contact Iowa Workforce and request a redetermination of availability. As always, during the pendency of any redetermination, or any subsequent proceedings in this case, the Claimant must continue to file her weekly claims for benefits.

Kim D. Schmelt

Ashley R. Koopmans

James M. Strohman

RRA/fnv