

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BETHANY J BAILEY
Claimant

MANPOWER INTERNATIONAL INC
Employer

APPEAL 17A-UI-01015-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/18/16
Claimant: Respondent (5-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the January 17, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2017. Claimant did not participate. Employer participated through staffing specialist Jacob Hofstetter. Jeny Herrera registered for the hearing on behalf of the employer, but did not attend the hearing.

ISSUES:

Was a suitable offer of work made to the claimant? If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer is a staffing agency. Claimant was assigned at Duro-last Roofing Inc., on April 11, 2016, in a temp-to-hire position, as a materials inspector. Claimant accepted the assignment and performed work for Duro-last Roofing Inc. On August 23, 2016, Duro-last Roofing Inc. offered claimant a permanent position as a Duro-last Roofing Inc. employee. Mr. Hofstetter testified that claimant accepted the full-time position as a Duro-last Roofing Inc. employee. Claimant became a Duro-last Roofing Inc. employee effective August 23, 2016. This was the only assignment claimant had with the employer. Claimant left the employer to work full-time for Duro-last Roofing Inc.

While claimant was on assignment she worked Monday through Friday, forty hours per week, at \$10.10 per hour. Claimant did not have a valid claim for unemployment insurance benefits on April 11, 2016 or August 23, 2016. Claimant filed a claim for benefits with an effective date of December 18, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer of work was made outside of the benefit year.

Iowa Code § 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. 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(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.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits are allowed.

DECISION:

The January 17, 2017, (reference 02) decision is modified with no change in effect. The offer of work was made outside of claimant's benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs