

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

AMY S MACGREGOR  
706 – 6<sup>TH</sup> ST SW  
SPENCER IA 51301-6252

MEDI-CLAIM SOLUTIONS LLC  
2303A W 18<sup>TH</sup> ST  
PO BOX 466  
SPENCER IA 51301

Appeal Number: 06A-UI-04943-DT  
OC: 02/19/06 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Medi-Claim Solutions, L.L.C. (employer) appealed a representative's April 27, 2006 decision (reference 05) that concluded Amy S. MacGregor (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2006. The claimant participated in the hearing. Cindy Donahue-Greer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse a offer of suitable work without good cause?

#### FINDINGS OF FACT:

The claimant worked for the employer's predecessor owner through February 17, 2006 as a full time collections specialist at the hourly rate of \$11.08 per hour. The predecessor owner informed the claimant and the other employees that February 17 would be their last date of employment. The administrative law judge notes there has been a prior representative's determination issued on March 15, 2006 (reference 01) which concluded that the separation was a layoff for lack of work on the part of the predecessor owner; that decision was not appealed and became final.

The employer became the successor owner as of February 18, 2006. The claimant established an unemployment insurance benefit year effective February 19, 2006. The administrative law judge notes that there has been a prior representative's determination issued on March 15, 2006 (reference 02) which concluded that an offer by Ms. Donahue-Greer, the owner of the successor business, to the claimant on February 8, 2006 to employ the claimant in her prior position and the claimant's refusal of that offer was not disqualifying because the claimant did not have an open claim at the time of the offer. That decision was appealed and affirmed by a decision of an administrative law judge issued on April 14, 2006 in 06A-UI-03324-HT; that decision was not appealed and has become final.

The claimant was contacted on March 2, 2006 by the employer's office manager regarding the possibility of returning to work at least on an interim basis for \$12.00 per hour. The claimant understood that this was to be on an ad hoc cash basis, with no discussion of position or length. The claimant was going to accept, but after coming in on March 9, 2006, changed her mind. On April 21, 2006, Ms. Donahue-Greer sent the claimant a letter offering the claimant employment in her prior collections specialist position under her prior employment terms to begin as soon as possible. On April 24, 2006, the claimant responded by email, indicating that she was declining because of "recent events." She questioned whether there was a bona fide vacancy in the collections specialist position, but she did not seek assurance of that fact from Ms. Donahue-Greer. The claimant further declined because she not wish to work for Ms. Donahue-Greer, as Ms. Donahue-Greer had been the manager of the business under the prior owner; the claimant felt Ms. Donahue-Greer was critical of at least one friend of the claimant, and that Ms. Donahue-Greer might have a tainted opinion of her because of some statements that another employee had made to Ms. Donahue-Greer about her. She was concerned that the work environment might be too much like the prior work conditions, in which she felt she was disliked by Ms. Donahue-Greer, and that the new employment conditions might also be difficult.

The claimant established a claim for unemployment insurance benefits effective February 19, 2006. Her weekly benefit amount was calculated to be \$262.00. The claimant has received unemployment insurance benefits after April 24, 2006 in the amount of \$1,048.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of 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. 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. 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.

871 IAC 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.

871 IAC 24.24(14)(a)(b) provides:

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.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

In this case, it is not clear that the March 2, 2006 communication was an actual offer of "employment" as compared to some type of independent contractor work. However, there was a bona fide offer of work<sup>1</sup> and a definite refusal of work on April 24, 2006, during an open claim year. While the claimant may have had issues with her prior employer, she did not "previously quit" the predecessor owner because of intolerable working conditions or any other reason. Therefore, while she may have had personality issues with the employer's manager and owner, the continuation of that management is not a good cause to make the offer of her exact same position unsuitable. Since the claimant could reasonably have returned to the employment immediately, benefits are denied as of April 24, 2006.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

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<sup>1</sup> Whether the collections specialist position was presently vacant as of April 21, 2006 is immaterial to determining whether the offer was "bona fide" – worse case scenario, if the claimant had "called the employer's 'bluff'" and accepted the offer, and the collections specialist position ended up being unavailable, the claimant could have declined being placed into another position other than the one she had accepted.

DECISION:

The representative's April 27, 2006 decision (reference 05) is reversed. The claimant did refuse a suitable offer of work. As of April 24, 2006 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,048.00.

ld/kkf