

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M KACMARYNSKI
Claimant

METHODIST MANOR
Employer

APPEAL 18A-UI-02802-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/31/17
Claimant: Respondent (5)**

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 February 23, 2018, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2018. Claimant participated. Employer participated through human resources manager Connie Jensen and CEO Nick Landgraf. Employer Exhibit 1 was admitted into evidence with no objection. The employer offered Employer Exhibit 2 into evidence. Claimant objected to Employer Exhibit 2 because she had not received it until the fact-finding interview. Claimant's objection was overruled and Employer Exhibit 2 was admitted into evidence over claimant's objection. Official notice was taken of the administrative record with no objection.

ISSUE:

Did the claimant refuse to apply for or accept an offer of suitable work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a cook with this employer from December 1, 2017, and was separated from employment on January 5, 2018 when she was laid off due to a lack of work.

Claimant worked for M & D Hamm Inc. from September 2014 until December 1, 2017, when the employer acquired M & D Hamm Inc. In November 2017, claimant filled out an application to work for the employer at the Sioux Rapids location. In November 2017, claimant asked Ms. Jensen if her position was only for the Sioux Rapids location and she was told yes. Claimant accepted the position for the employer as a cook at the Sioux Rapids location.

In late December 2017, kitchen supervisor Amy Koster informed claimant that her hours were going to be reduced. On January 4, 2018, Ms. Koster informed claimant that January 5, 2018 would be her last day of work. Ms. Koster told claimant in person and also provided her a note that her last day was January 5, 2018. Ms. Koster told claimant that she was no longer needed

because the employer was down to two residents at the Sioux Rapids location and her position was being eliminated. Claimant understood that the sole reason for her separation was due to the lack of residents at the employer. Claimant's pay rate at the Sioux Rapids location was \$11.25 per hour. Claimant's residence was approximately 5 miles from the Sioux Rapids location.

On January 5, 2018, the employer mailed a letter (dated January 5, 2018) to claimant by regular mail. Employer Exhibit 2. The letter was not mailed as a registered letter. The letter informed claimant that her position at the Sioux Rapids location was being eliminated. Employer Exhibit 2. The letter also offered claimant a position as an afternoon cook or a dietary aide at the employer's Storm Lake facility. Employer Exhibit 2. The January 5, 2018 letter did not include any details (job duties, pay rate, hours, etc.) about the positions. Employer Exhibit 2. The employer gave claimant until January 17, 2018 to respond to the offer. Employer Exhibit 2. Claimant had a valid claim for unemployment insurance benefits at this time. Claimant had filed a claim for unemployment insurance benefits with an effective date of December 31, 2017. Claimant testified she did not receive the employer's January 5, 2018 letter.

On January 5, 2018, claimant also had a conversation with Mr. Landgraf. Claimant wanted to confirm that her position at the Sioux Rapids facility was eliminated. Mr. Landgraf did not verbally offer claimant a position at the employer's Storm Lake facility during this conversation. Mr. Landgraf did not discuss any specifics (job duties, pay rate, hours, etc.) with claimant about open positions at the employer's Storm Lake facility. Claimant was not aware of any meetings the employer had with the Sioux Rapids employees prior to January 5, 2018 about job opportunities at the employer's Storm Lake facility.

The employer did not make an offer of work to claimant around February 5, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no bona fide offer of work was actually communicated to claimant.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Although the employer mailed claimant an offer of work on January 5, 2018, claimant did not receive the employer's letter. The employer did not mail its offer of work as a registered letter and has not established that claimant actually received the letter. It is also noted that although the letter offered claimant two different positions, it failed to disclose any details (job duties, pay rate, hours, etc.) about the position. Claimant also denied attending any meetings with the employer prior to January 5, 2018 where the employer discussed positions at its Storm Lake facility. Also on January 5, 2018, claimant spoke to Mr. Landgraf about her position being eliminated. Claimant credibly testified that during this conversation Mr. Landgraf did not make her an offer of work. Claimant's testimony was corroborated by Mr. Landgraf's testimony that he did not make claimant an offer of work during their meeting. The employer has failed to establish that a bona fide offer of work was actually communicated to claimant on January 5, 2018. Since no offer of work was actually made, benefits are allowed.

It is noted that the unemployment insurance decision dated February 23, 2018 (reference 03) refers to an offer of work on February 5, 2018; however, both parties agreed that no offer of work was made to claimant on February 5, 2018 and it appears this decision was actually referring to an offer of work on January 5, 2018.

DECISION:

The February 23, 2018, (reference 03) decision is modified with no change in effect. The employer did not communicate an offer of work to claimant on January 5, 2018. Benefits are allowed, provided claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs