

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SONDRA K OCKER
Claimant

APPEAL NO. 07A-UI-10109-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST MFG SYSTEMS INC
Employer

OC: 09/16/07 R: 03
Claimant: Respondent (1-R)

Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Midwest Manufacturing Systems, Inc., filed a timely appeal from the October 26, 2007, reference 03, decision that allowed benefits and that concluded no offer of suitable employment had occurred on September 24, 2007. After due notice was issued, a hearing was held on November 19, 2007. Wayne Dirks, President, represented the employer. Claimant Sondra Ocker did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge notes that the claimant's benefit warrants have continued to be directed to the same address of record as recently as November 16, 2007 and that the claimant's notice of the hearing has not been returned to the Agency as undeliverable.

ISSUES:

Whether the employer made an offer of suitable employment.

Whether the claimant refused to accept a suitable offer of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sondra Ocker was employed by Midwest Manufacturing Systems as a full-time machine shop assembly worker from May 2007 until mid-September 2007, when Wayne Dirks, President, advised her that she would be temporarily laid off and that the employer would contact her the following week. The next Wednesday and Thursday, Robert Sackett, Machine Shop Manager telephoned Ms. Ocker and left a message. On the following Friday, Mr. Sackett telephoned Ms. Ocker's number, but the number had been disconnected.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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.

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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence fails to establish, by a preponderance of the evidence, a bona fide offer of employment subsequent to the lay-off. Machine Shop Manager Robert Sackett continues in his employment. Though Mr. Sackett is the person who attempted to contact Ms. Ocker, the employer did not offer testimony from Mr. Sackett. The evidence indicates that Mr. Sackett did not speak directly to Ms. Ocker. The evidence fails to establish the specific content of the messages Mr. Sackett left for Ms. Ocker or whether Ms. Ocker received the messages. The evidence fails to establish a refusal of the recall. Accordingly, Ms. Ocker is eligible for benefits, provided she is otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence presented raises the question of whether Ms. Ocker has been available for work since establishing her claim for benefits. The matter will be remanded so that the issue can be investigated.

DECISION:

The Agency representative's decision dated October 26, 2007, reference 03, is affirmed. There was no bona fide offer of employment in mid-September and, therefore, no refusal of suitable employment. The claimant is eligible for benefits, provided she is otherwise eligible. The matter is remanded for determination of whether the claimant has been available for work since establishing her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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