

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOZINGO, MELISSA, A
Claimant

APPEAL NO. 12A-UI-06051-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
PALMER CONSULTING
Employer

OC: 08/07/11
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.5(3)(a) - Refusal of Suitable Work

STATEMENT OF THE CASE:

Melissa Mozingo filed a timely appeal from the May 15, 2012, reference 06, decision that denied benefits based on the conclusion that she had willfully discouraged the employer from hiring her. After due notice was issued, a hearing was held on June 18, 2012. Claimant participated. Cody Franson, Account Executive, represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the May 15, 2012, reference 07 decision, which decision found that the claimant was laid off from Palmer Consulting effective April 24, 2012, due to a lack of work.

ISSUES:

Whether the claimant refused a suitable offer of employment on or about April 22, 2012.

Whether the claimant has been able to work and available for work since she established the additional claim for benefits that was effective April 22, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mozingo had established an original claim for benefits that was effective August 7, 2011 and continued the claim through the week that ended January 14, 2012. Ms. Mozingo filed an additional claim for benefits that was effective April 22, 2012.

The employer is a staffing agency. The employer provides temporary employment assignments, temp-to-hire employment assignments, and does some direct hiring of workers for client businesses.

Ms. Mozingo has a Bachelor's degree in Marketing Management and is finishing an online Master's degree in Human Resources Management.

On January 13, 2012, the employer placed Ms. Mozingo in a full-time, temp-to-hire work assignment at Wells Fargo Bank. Ms. Mozingo last performed work in that assignment on April 19, 2012. At that time, Wells Fargo Bank notified Palmer Consulting that it was ending Ms. Mozingo's assignment. The decision to end the assignment was not based on misconduct, but was instead based on the Wells Fargo Bank supervisor's conclusion that Ms. Mozingo was not a good fit. On April 22, 2012, Eric Sonksen, Palmer Consulting Staffing Consultant, notified Ms. Mozingo that the assignment had ended. Mr. Sonksen told Ms. Mozingo that he did not know of any other position available at that time, but asked whether Ms. Mozingo wished to be considered for further assignments. Ms. Mozingo indicated that she was not interested in further assignments with the employer because she had now had two temporary assignments come to an abrupt end, that the temporary nature of the work assignments had interfered with securing ongoing childcare for her three-year-old stepdaughter, and that she was only interested in permanent, full-time employment. There was no further discussion or contact between the parties about further work assignments.

Ms. Mozingo began her new search for permanent, full-time employment during the week that ended April 28, 2012. From that time, Ms. Mozingo has applied for two or more positions each week by submitting resumes to prospective employers and by completing online applications.

REASONING AND CONCLUSIONS OF LAW:

When a claimant refuses a suitable offer of employment when they have an active claim for benefits, and does so without good cause, the claimant is disqualified for unemployment insurance benefits until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. See Iowa Code section 96.5(3).

To find a work refusal, the evidence must first indicate a bona fide offer of employment. See Iowa Admin. Code section 871 IAC 24.24(1).

Iowa Administrative Code section 871 IAC 24.24(12) provides as follows:

24.24(12) Claimant discourages prospective employers. When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, Ms. Mozingo shall be deemed to have refused suitable work as contemplated by the statute.

The weight of the evidence indicates that Mr. Sonksen specifically told Ms. Mozingo on April 22, 2012, that he did *not* have additional work for her at that time. The discussion regarding additional work referred to work that might become available at some point in the future. Ms. Mozingo had in fact already been hired by Palmer Consulting and had performed work in good faith for that company until there was no more work for her. Ms. Mozingo's statement that she was not interested in further *temporary* work assignments did not indicate a refusal of *permanent*, full-time employment if the employer had such work for her. The employer has presented insufficient evidence to establish that Ms. Mozingo said she would prefer to stay home, work part-time, and collect unemployment insurance benefits. Ms. Mozingo's statement that she was not interested in further *temporary* employment was not a blanket refusal to accept further employment through Palmer Consulting. The employer does some direct hiring of permanent, full-time workers for client businesses. The evidence indicates that Ms. Mozingo remained available for such work and specifically told Mr. Sonksen this.

Given that the express public policy contained in the Iowa Employment Security Law is to provide workers with stable employment, Ms. Mozingo should not be penalized for focusing her work search on obtaining permanent, full-time employment. See Iowa Code section 96.2.

In any event, Ms. Mozingo's one time utterance that she was interested only in permanent, full-time employment did not in fact constitute "a course of action designed to discourage a prospective employer from hiring" her. The term "course of action" implies something more than an isolated utterance. Ms. Mozingo's isolated utterance about wanting to steer clear of *temporary* work assignments because of the disruption it caused to her family life did not amount to a *course of action*. There was no refusal of suitable work on April 22, 2012. Ms. Mozingo would be 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 weight of the evidence in the record establishes that Ms. Mozingo has indeed been available for, and engaged in an active and earnest search for, full-time, permanent employment since she established her additional claim for benefits. This is indicated both by Ms. Mozingo's testimony concerning her work search activities and Exhibit A, which documents her substantial work search activities. Ms. Mozingo is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's May 15, 2012, reference 06, decision is reversed. The claimant did not refuse an offer of suitable employment on or about April 22, 2012, as there was no offer. The claimant did not engage in a course of action designed to discourage a prospective employer from hiring her. The claimant has been able and available for full-time employment, and actively and earnestly engaged in a search for new full-time employment, since she established the additional claim for benefits that was effective April 22, 2012. The claimant is eligible for benefits, effective April 22, 2012, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs