

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEAN M FASSLER
Claimant

METHODIST MANOR
Employer

APPEAL 18A-UI-02804-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Respondent (5)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the February 21, 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. 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 worked as a dietary cook for M & D Hamm Inc. at the Sioux Rapids facility from June 18, 2008 until December 1, 2017, when the employer acquired M & D Hamm Inc. Claimant remained employed with the employer as a dietary cook until January 26, 2018, when the employer closed its Sioux Rapids facility. Claimant's pay rate at the Sioux Rapids facility was \$11.60 per hour.

Approximately two weeks before January 26, 2018, claimant and her manager toured the employer's main building in Strom Lake, Iowa. The supervisor of the main building, Aaron, was not sure where the employer could place them. Claimant and her manager also toured another facility owned by the employer in Strom Lake.

Prior to January 26, 2018, the employer offered claimant a job at one of its Storm Lake facilities. The position was a dietary position (e.g., serving, getting drinks, and prepping salad bar). The job hours were from 10:30 a.m. to 7:00 p.m. on a rotating schedule. The employer indicated claimant would receive around thirty hours per week. The pay rate for the position was \$11.60 per hour. The employer's Storm Lake facility is approximately 19 miles from claimant's residence. Prior to January 26, 2018, claimant went to the Storm Lake facility and tired out the position, but she did not like the position. Claimant's supervisor (Amy Koster) at the employer's Sioux Rapids location was also going to be the supervisor at the employer's Storm Lake facility. Prior to January 26, 2018, claimant told Ms. Koster that this position would not work for her due to the hours. Claimant then separated from employment on January 26, 2018. Claimant did not

have a valid claim for unemployment insurance benefits at the time. Claimant opened a claim for benefits with an effective date of January 28, 2018.

On January 25, 2018, the employer mailed an offer to claimant as a dietary position at its Storm Lake facility. The letter did not provide any details (job duties, pay rate, hours, etc.) about the position. The employer gave claimant until January 31, 2018 to accept the offer or it would consider her to have resigned. Claimant had declined this position in a discussion with Ms. Koster prior to January 26, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to accept an offer of work, but the offer of work was made outside claimant's benefit year and the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed.

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(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.

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.

The employer made claimant an offer of work in a dietary position prior to January 26, 2018 and she declined this offer of work prior to January 26, 2018. Although the employer did send claimant a letter dated January 25, 2018, the letter merely offered her the same position she had already declined. Furthermore, the letter did not provide any details (job duties, pay rate, hours, etc.) about this position. Claimant did not file a claim for benefits until January 28, 2018; therefore, 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 February 21, 2018, (reference 03) decision is modified with no change in effect. Claimant failed to accept an offer of work made outside of her benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs