

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE SCHERF

Claimant

APPEAL NO. 15A-UI-04284-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D & D REAL ESTATE HOLDINGS LLC

Employer

OC: 12/13/15

Claimant: Respondent (1)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 7, 2016, reference 03, decision that allowed benefits to the claimant, provided she was otherwise eligible for benefits, based on an Agency conclusion that the claimant declined an offer of work on November 30, 2015 prior to her unemployment insurance claim. After due notice was issued, a hearing was held on April 27, 2016. Claimant Jane Scherf participated. Michelle Pitz represented the employer and presented additional testimony through David Tallett and Donald Ryan. Exhibits One through Four were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, the March 8, 2016 decision that held D & D Real Estate Holdings, L.L.C. was a successor employer to Leroy E. Skogman et al., and the January 19, 2016, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible, and that held the account of Oakland Court Company/Leroy E. Skogman et al. could be charged for benefits, based on an Agency conclusion that the claimant had been laid off effective December 16, 2015.

ISSUE:

Whether Ms. Scherf is disqualified for benefits and whether employer D & D Real Estate Holdings, L.L.C. is relieved of liability for benefits, based on a refusal of suitable work.

Whether Ms. Scherf has been able to work and available for work within the meaning of the law since she established the claim for benefits that was effective December 13, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jane Scherf was employed by Oakland Court Company/Leroy E. Skogman et al. as the full-time property manager/leasing agent from 1989. Ms. Scherf performed her duties at Oakland Gardens, a 190-unit apartment complex on Oakland Road in Cedar Rapids. Ms. Scherf supervised two maintenance workers and additional office staff. Ms. Scherf last performed work for Oakland Court Company/Leroy E. Skogman et al. on December 15, 2015. Her final wage was \$18.75 an hour for a 40-hour work week. The weekly wage was \$750.00.

Ms. Scherf's employment with Oakland Court Company/Leroy E. Skogman et al. came to an end because that company sold Oakland Gardens to D & D Estate Holdings, L.L.C. The transfer was effective December 15, 2015. There is no common ownership between Oakland Court Company/Leroy E. Skogman et al. and D & D Estate Holdings, L.L.C. After the sale, the new owner continued to operate Oakland Gardens.

In September 2015, the owners of D & D Estate Holdings, L.L.C. opened discussion with Ms. Scherf about having Ms. Scherf continue as the full-time property manager/leasing agent at Oakland Gardens once D & D Estate Holdings, L.L.C. The discussion continued into November 2015 and led to a November 30, 2015 offer of employment. The offer took place during in-person contact between D & D representatives and Ms. Scherf. D & D offered to pay Ms. Scherf \$1,500.00 in salary per bi-weekly pay period for a minimum of 40 hours per week. The pay would remain the same if the duties demanded a longer work week. D & D proposed 8:00 a.m. to 5:00 p.m., Monday through Friday, with an hour off for lunch, as the expected hours of operation. Those hours fell in line with Ms. Scherf's work hours under Oakland Court Company/Leroy E. Skogman et al. Though Ms. Scherf had enjoyed six weeks of paid vacation under Oakland Court Company/Leroy E. Skogman et al., the proposed D & D employment would offer no vacation benefit during the first year beyond paid holiday, and would offer two weeks of vacation after the first year of employment. The vacation benefit would increase after five years of employment.

On November 30, 2015, Ms. Scherf provided an equivocal response to D & D's offer of employment. D & D left the November 30, 2015 offer open and continued the discussion with Ms. Scherf in the hope of persuading her to continue in the property manager/leasing agent position. On December 10, 2015, Ms. Scherf provided D & D with her definitive refusal. Ms. Scherf refused the offer of employment due to concerns she had about the conditions of the proposed employment. Her primary concern was the employer's expectation that she master the employer's computer-based documentation system as part of the property manager/leasing agent position. While in the Oakland Court Company/Leroy E. Skogman et al. employment, Ms. Scherf had to make minimal use of computers. Her use of computers was limited to using email and to contributing data to office staff for inclusion on spread sheets. Ms. Scherf is 59 years. Ms. Scherf was not interested in learning new computer skills, despite D & D's assurances that it would provide appropriate training. Ms. Scherf's second concern was that the primary maintenance person who had worked under her at Oakland Gardens might not stay on with the new employer. Ms. Scherf's third concern was the absence of a vacation benefit comparable to the vacation benefit she enjoyed with Oakland Court Company/Leroy E. Skogman et al.

During the week of December 13-19, 2015, Ms. Scherf established a claim for unemployment insurance benefits that was deemed effective December 13, 2015. Workforce Development calculated Ms. Scherf's weekly benefit amount at \$423.00. Ms. Scherf made weekly claims through the benefit week that ended April 23, 2016 and received \$7,842.00 in benefits for the period of December 13, 2015 through April 23, 2016. Ms. Scherf then discontinued her claim. Oakland Court Company/Leroy E. Skogman et al. is the sole base period employer.

During the period when Ms. Scherf's claim was active, Ms. Scherf made two job contacts per week. Almost all of Ms. Scherf's job contacts were for prospective employments that a reasonable person would expect to require her to master at least basic, if not more involved, computer skills.

On January 19, 2016, a Workforce Development claims deputy entered a reference 01 decision that allowed benefits to Ms. Scherf provided she met all other eligibility requirements, based on a conclusion that Oakland Court Company/Leroy E. Skogman et al. had laid Ms. Scherf off effective December 16, 2016.

On March 8, 2016, a Workforce Development Tax Bureau representative entered a decision that held D & D Real Estate Holdings, L.L.C. was a successor employer to Leroy E. Skogman et al. and would "receive a complete transfer of experience" to include "taxable wages and benefit charges." The March 8, 2016 decision indicated that D & D was "liable for all debt the former owner of the business owes Iowa Workforce Development."

REASONING AND CONCLUSIONS OF LAW:

Workforce Development has already adjudicated Ms. Scherf's eligibility for benefits in connection with her December 15, 2015 separation from Oakland Court Company/Leroy E. Skogman et al. The January 19, 2016, reference 01, decision allowed benefits to Ms. Scherf provided she was otherwise eligible, and held that the employer account of Oakland Court Company/Leroy E. Skogman et al. could be charged for benefits, based on an Agency conclusion that Ms. Scherf had been laid off effective December 16, 2015. That decision became a final agency decision when no appeal was filed from the January 29, 2016 appeal deadline and the administrative law judge has no jurisdiction to disturb the decision. See Iowa Code Section 96.6(2) ("Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.")

Iowa Code § 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) 100 percent, if the work is offered during the first five weeks of unemployment.
- (2) 75 percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) 70 percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) 65 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.

Iowa Admin. Code r. 871-24.24(1)a and (8) 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.

- (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.

The weight of the evidence establishes a bonafide offer of employment on November 30, 2015 through direct contact between the parties. The evidence establishes a definite refusal on December 10, 2015. The work offered was suitable work. The work was essentially the same work that Ms. Scherf had performed for the old employer. The pay and most of the conditions were sufficiently similar to the conditions with Oakland Court Company/Leroy E. Skogman et al. The initial absence of a vacation pay benefit did not make the work unsuitable. D & D's expectation that Ms. Scherf master its computer system did not make the work unsuitable. Questions as to whether the maintenance person would stay did not make the work unsuitable.

Both the offer and the refusal occurred prior to Ms. Scherf's claim for unemployment insurance benefits. For that reason, the refusal of suitable work on or before December 10, 2015 would not disqualify Ms. Scherf for unemployment insurance benefits in connection with the claim that was effective December 13, 2015.

The remaining issue is whether Ms. Scherf satisfied the work ability and work availability requirement during the weeks between December 13, 2015 and April 23, 2016.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(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.

Ms. Scherf's decision to decline employment with D & D prior to establishing her claim for benefits does not prevent her from meeting the work availability requirement. The evidence establishes that Ms. Scherf made two job contacts per week while her claim was active. Though Ms. Scherf took an unreasonable position regarding her willingness to master computer skills in a computer-based local and national labor market, she nonetheless applied for positions that would require at least base computer skills. There is no evidence to suggest that she refused any offer of employment while her claim was active based on a reluctance to master basic computer skills. Ms. Scherf satisfied the work ability, work availability and work search requirement while her claim was active and is eligible for benefits for the period of December 13, 2015 through April 23, 2015, provided she meets all other eligibility requirements.

DECISION:

The April 7, 2016, reference 03, is affirmed. The offer and refusal of suitable work predated the claim for benefits and did not disqualify the claimant for unemployment insurance benefits. The claimant satisfied the work ability, work availability and work search requirement during the period of December 13, 2015 through April 23, 2015. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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