

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARICELA FRANCO

Claimant

APPEAL NO. 11A-UI-08585-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11-28-10

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 24, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 11, 2011. The claimant did participate with the assistance of interpreter Patricia Vargas. The employer did not participate.

ISSUES:

Did the claimant refuse a suitable offer of work?

Is she able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was assigned to work at Syngenta, a seed company on a seasonal basis beginning in 2009. She worked until May 19, 2011 at which time she was told she was laid off due to lack of work by her supervisor Jeremy Olson. She was not offered any other assignment at that time. On June 24 the claimant was called back to work at Syngenta and returned to work for them. On July 9, 2011 she was involved in a non-work-related car accident that left her unable to work per her doctor's orders. She has not been physically able to work since July 9, 2011 and is not scheduled to return to her doctor until September 8 at which time she will find out when she will be allowed to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

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.

The claimant did not refuse a suitable offer of work as after she was laid off on May 19 she was not offered any other work or assignment until June 24 when she was offered a return to Syngenta which she accepted. As the claimant was not offered any other work, there can be no finding that she refused a suitable offer of work.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective July 9, 2011.

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".

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician has not released the claimant to return to work with or without restriction, the claimant has not established her ability to work. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant is released to perform her full work duties, she is not considered able to or available for work.

DECISION:

The June 24, 2011, reference 02, decision is modified in favor of the claimant. Claimant did not refuse a suitable offer of work. The claimant is allowed benefits from May 19, 2011 through July 9, 2011. Effective July 9, 2011 benefits are denied as the claimant is not able to and available for work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs