

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACEY A HOWELL
Claimant

**c/o SEDONA GROUP
TEMPRO SERVICES INC**
Employer

APPEAL NO. 11A-UI-09138-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/29/11
Claimant: Respondent (1)**

Section 96.5-3 – Suitable Work Offer

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 12, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that no offer of work was actually made on June 6, 2011. After due notice, a telephone hearing was held on August 3, 2011. Claimant participated personally. The employer participated by Ms. Laurie Pauley, Clerical Account Manager. A potential witness, Mr. Chad Baker, did not testify.

ISSUE:

The issue is whether the claimant was actually offered suitable work and whether the claimant had good cause for refusal.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Ms. Tracey Howell last worked for the captioned employer on approximately April 22, 2011 when her most recent assignment ended. After that assignment ended, Ms. Howell sought new assignments with Sedona Group d/b/a/ Temprow Services Inc. and also sought employment through other employment services.

The claimant was offered assignments by Temprow Services, Inc. on April 29 and May 11, 2011, however, these offers took place prior to Ms. Howell claiming unemployment insurance benefits and are not the subject of this appeal.

On June 6, 2011, Ms. Howell was contacted by Laurie Pauley via e:mail and offered an assignment with the Deere Company. The assignment was to last six months to one year and paid an hourly rate of pay at the same or higher than Ms. Howell previously received. After speaking to Ms. Pauley, Ms. Howell agreed to update her resume and to accept the employment, if offered. The claimant's resume was forwarded, however, no job offer was communicated to Ms. Howell for that job position. Ms. Howell did not receive any other offers of work on June 6, 2011 via telephone. The claimant was actively seeking employment through

the captioned temporary employment service as well as other temporary services during this period of time. Subsequently, the claimant was offered and accepted work through another temporary service.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not refuse an actual offer of suitable work on June 6, 2011.

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) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five 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.

871 IAC 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.

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.

In this case the testimony is disputed. The administrative law judge, having heard the testimony of the witnesses and having considered the matter concludes that Ms. Howell was contacted by Tempco Services, Inc. by e:mail on June 6, 2011 and at that time informed of a possible job opening with the Deere Company. The claimant was willing to accept the job, if actually offered, and updated and submitted her resume for submission to the client employer. The client employer elected not to offer the job to Ms. Howell. The administrative law judge, therefore, concludes that no actual offer of work was made and the claimant is, therefore, not subject to a benefits disqualification for a work refusal.

The administrative law judge finds the claimant's testimony that she was not offered any other positions at that time to be credible and finds that her testimony is not inherently improbable. The claimant testified that the working relationship between herself and Tempco Services, Inc.'s clerical account manager had deteriorated and that communications between the parties had been sporadic.

DECISION:

The representative's decision dated July 12, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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