

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

FELICIA R NUNO
3642 AVE C
COUNCIL BLUFFS IA 51501

STAFF MID-AMERICA
4315 FRANCES ST
OMAHA NE 68105

Appeal Number: 04A-UI-11832-DT
OC: 10/03/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Staff Mid-America (employer) appealed a representative's October 25, 2004 decision (reference 01) that concluded Felicia R. Nuno (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on November 29, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-11833-DT. The claimant participated in the hearing. Jerry McClosky appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The employer is a temp-to-hire employment placement firm. The claimant began a position through the employer on August 24, 2004. She worked full time at the employer's business client answering phones and doing accounts receivable at an hourly rate of \$9.00. Her last day working for the client was September 27, 2004. Approximately September 17, a representative of the client indicated to the claimant that the client was interested in hiring the claimant on a permanent basis. The claimant responded that she would be interested in working for the client, but would need to be paid more than \$9.00 per hour, as she had previously made \$12.00 per hour and was not prepared to make less on a regular basis. The representative acknowledged she understood the claimant's position and the claimant believed that the representative was going to check with higher management and get back with her, but that did not occur; the claimant then learned that the client had hired someone else. The client asked the claimant to stay on through September 27, which she did. The employer was aware that the claimant's position with the business client was ended as of that date.

The claimant established an unemployment insurance benefit year effective October 3, 2004. Her average weekly wage for her claim was determined to be \$481.00, reflecting her prior \$12.00 per hour wage in her previous full time employment.

A few days after September 27, a representative of the employer contacted the claimant and indicated that there was another potential temporary assignment the claimant could take. The rate of pay would have been \$11.00 per hour to start on October 8, but it would have only lasted for approximately two days. The position was with a different business client that was about twice as far away from the claimant's home as the position with the first business client, so would take her between 35 to 45 minutes, instead of 15 to 20 minutes. Therefore, the claimant declined that offer.

The claimant kept in regular contact with the employer's representative until approximately October 21, when the fact-finding interview was held. After that date, the claimant felt her contact with the employer was not welcome. The employer considered the claimant unavailable for work because of her subsequent lack of regular contact.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work with the employer's first business client.

Iowa Code Section 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(1)a(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.

First, the employer has not established that any offer to become employed permanently at the first business client was made after October 3, 2004, the effective date of the claimant's claim; therefore, any refusal would not be disqualifying. Further, while the claimant had a preliminary discussion with a representative of the business client regarding the possibility of her becoming permanently employed, the client did not make a formal offer. Therefore, there was no bona

fide offer of work and no definite refusal of work. Benefits are allowed, if the claimant is otherwise eligible.

A secondary issue is whether the claimant was able and available for work when she failed to maintain as regular contact with the employer as the employer expected. When an employee completes a temporary assignment at a business client and the employer is aware that the assignment has ended and that the employee is therefore available for another assignment, continuing to contact the employer for a new assignment is not necessary to satisfy the availability requirements for unemployment insurance benefit eligibility. 871 IAC 24.26(19); 871 IAC 24.22(2). Benefits are allowed, if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code Section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code Section 96.19-3. The claimant's base period began July 1, 2003 and ended June 30, 2004. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's October 25, 2004 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work with the first business client. The claimant is able and available for work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

ld/s