

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIA MUTONJI
Claimant

APPEAL 22A-UI-00197-SN

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

**OC: 05/09/21
Claimant: Respondent (3)**

Iowa Code section 96.4(3) – Able and Available
Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Admin. Code r. 871-24.24(1)a – Bonafide Offer of Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 12, 2021, (reference 03) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on January 21, 2022. The claimant participated. The employer participated through Branch Manager Vicky Matthais. Official notice was taken of the agency records.

ISSUES:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Whether the claimant was able and available for work effective May 9, 2021?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

On May 8, 2021, General Mills laid the claimant off from a general laborer position. This position paid her \$11.47 per hour. In this role, the claimant taped up, closed and stacked boxes. Occasionally, the claimant would prevent boxes from falling off a conveyer line. Prior to accepting this position, the claimant passed the employer's drug test and background check requirements.

On May 12, 2021, the claimant stopped at the employer's office. The claimant asked Placement Consultant Dawn Starr if there was a position at the site employer, NFI Industries Incorporated. Ms. Staff informed her that there were not open positions there at that time. Ms. Matthais did not have records reflecting why the claimant desired that employer or what position she specifically wanted. However, Ms. Starr informed the claimant of three positions at three different employers, which are described individually in the three paragraphs below. The

claimant asked Ms. Starr to send her an email, so that she could consider these positions. Ms. Starr sent an email that same day.

A sorter position at RS Hanline sorting potatoes and tomatoes with an hourly rate of \$15.00. The claimant could have worked this position on the following day. The claimant would have performed in this role at a facility located at 3225 Prairie Court in Cedar Rapids, Iowa 52302.

A production worker position at Ryder setting up cereal displays in grocery stores with an hourly rate of \$14.00. The claimant could have worked this position on the following day. The claimant would have performed in this role at a facility located at 3805 6th Street Southwest in Cedar Rapids, Iowa 52404.

A laborer worker position at Frontier Natural Products helping with packaging of items with an hourly pay of \$13.00 per hour. The claimant could have worked this position on the following day. The work would have been performed either at 3021 78th Norway, Iowa 52318 or 200 Industrial Boulevard in Belle Plaine, Iowa 52208.

The claimant did not accept or refuse these offers. The claimant simply did not say one way or the other. The record does not indicate the employer followed up after sending the positions by email to the claimant on May 12, 2021. The claimant began working for employer at a new site employer on September 2021.

The claimant made an original claim for benefits effective May 9, 2021. Claimant's average weekly wage is \$446.00. The offer was made in the first week of unemployment.

REASONING AND CONCLUSIONS OF LAW:

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

Cases of "refusal of suitable work without good cause" are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was suitable. Iowa Code § 96.5(3)a(1) provides:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

The administrative law judge concludes the circumstances in the record do not show the claimant refused the offers described in the findings of fact. It is uncontroverted that these offers were extended to the claimant. The administrative rule states the refusal must be "definite." In this case, the employer concedes the claimant did not refuse or accept these offers. Rather the claimant just never responded one way or the other. These circumstances do not give rise to a finding that the claimant definitively refused the positions.

The administrative law judge acknowledges claimants may ignore an employer's offer, if silence is insufficient to show a definite refusal occurred. However, the administrative law judge notes that the employer did not subsequently follow up with the claimant regarding these offers. Absent additional circumstance suggesting the claimant refused the position rather than simply forgetting the offers were made, he finds no definite refusal was made.

The administrative law judge will now evaluate whether the claimant was able and available for work.

Iowa Code section 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

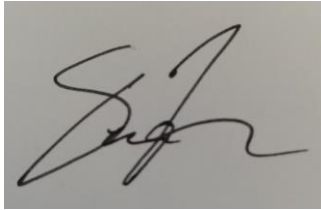
(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, 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.

In this case, the claimant's silence in response to the employer's offers of employment shows the claimant was not attached to the labor market effective May 15, 2021. The claimant has not shown she was able and available effective May 9, 2021. Benefits are denied.

DECISION:

The November 12, 2021, (reference 03) decision is modified in favor of the respondent. The claimant did not give a definitive refusal to the job offers offered to her. As a result, the administrative law judge is not imposing the work refusal penalty on the claimant. However, the claimant's lack of a response to the employer's offers extended to her on May 12, 2021, show she was not able and available for work effective May 9, 2021. Benefits are denied until the claimant can show she is able and available for work.



Sean M. Nelson
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February 18, 2022
Decision Dated and Mailed

smn/mh