

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN M INGLE

Claimant

APPEAL NO. 15A-UI-09722-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PCM COMMUNITY SCHOOL DISTRICT

Employer

OC: 08/02/15

Claimant: Appellant (2R)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 25, 2015, reference 02, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on September 15, 2015. Claimant participated personally. Employer participated by Brad Jemeland and Jeana Van Voorst. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant refused to accept a suitable offer of work?

Whether claimant is able and available for work?

Whether claimant is overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant's previous contract had ended on May 29, 2015. At or near the end of claimant's 2014-2015 contract, claimant was not offered another contract for employment as the student claimant served was no longer in need of services. Employer made an offer of work to the claimant on July 17, 2015. That offer included the following terms: Claimant would be working the same hours that she had previously worked. Claimant would receive \$9.46 per hour. Claimant had previously been paid \$14.06 per hour. The offer was made in the seventh week of unemployment. Employer stated that the offer of pay was commensurate with the bargained for amount entered into by the teachers' union. Whereas claimant had been working with a student in need of a higher level of attention, claimant's new student was one with a lower level of need.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to § 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to § 602.10101.

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.

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work. Employer's offer of work occurred in the seventh week of unemployment, and the offer was not at 75 percent of claimant's previous level of pay. The offer of pay was at 67 percent of claimant's previous level of pay. The determination of eligibility for unemployment benefits is not contingent upon contracts agreed to by teachers' unions, but rather contingent on the level of pay to be received. As claimant's refusal of the contract offered is appropriate under Iowa law at the point when claimant was offered the contract, unemployment benefits are allowed. Claimant is not deemed to have been overpaid benefits.

As claimant did not participate in the hearing, the administrative law judge was unable to ascertain whether claimant is able and available for work. This issue is remanded to the finder of fact to determine whether claimant is able and available for work.

DECISION:

The decision of the representative dated August 25, 2015, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. The matter is remanded to the finder of fact to determine whether said requirements including, but not limited to claimant ability and availability to work are satisfied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css