

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA KELTON**  
Claimant

**AFFINITY HOMECARE LLC**  
Employer

**APPEAL 19A-UI-00926-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/13/19**  
**Claimant: Respondent (1R)**

Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

Affinity Homecare LLC (employer) filed a timely appeal from the January 30, 2019, reference 01, unemployment insurance decision that allowed benefits based on the determination Jessica Kelton (claimant) did not have an unemployment insurance claim when the offer of work was made. After due notice was issued, a telephone conference hearing was held on February 18, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. The employer participated through Owner Melanie Frantz.

**ISSUES:**

Was a suitable offer of work made to the claimant?  
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for the employer part-time as a Homecare Aide and her last day worked was in mid-December. The claimant was supposed to work with a client on December 16 and December 23, 2018. However, she was a no-call/no-show and the client cancelled her services with the employer. Owner Melanie Frantz stopped scheduling the claimant as a result of the absences and later learned that the claimant does not have a valid driver's license which is a requirement of the position. The issues of whether the claimant has separated from employment, if that separation is qualifying, and if she is able to and available for work due to a lack of transportation have not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The claimant filed her claim for benefits effective January 13, 2019. The employer protested the notice of claim stating that the claimant refused an offer of work on December 16 and December 23. The employer has not made any offers of work to the claimant since January 13, 2019.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes any offer of work was made outside the claim year and there is no jurisdiction to make a determination on the suitability of the offer.

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. (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.

Iowa Admin. Code r. 871-24.24(8) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(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.

The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the alleged offer of employment took place outside of the benefit year. Benefits are allowed, provided the claimant is otherwise eligible.

The issues of whether the claimant has separated from employment, if that separation is qualifying, and if she is able to and available for work due to a lack of transportation are remanded to the Benefits Bureau of Iowa Workforce Development (IWD) for a fact-finding interview and unemployment insurance decisions.

**DECISION:**

The January 30, 2019, reference 01, decision is affirmed. The alleged failure to accept an offer of work was made outside of the claimant's benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:**

The issues of whether the claimant has separated from employment, if that separation is qualifying, and if she is able to and available for work due to a lack of transportation are remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decisions.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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