

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARQUEZ THOMAS
Claimant

APPEAL NO. 21A-UI-01034-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 04/05/20
Claimant: Respondent (2R)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 10, 2020, reference 05, decision that allowed benefits to the claimant, based on the deputy's conclusion that the employer did not make an offer of employment on September 10, 2020. After due notice was issued, a hearing was held on March 11, 2021. Claimant Marquez Thomas participated. Mai Lor represented the employer and presented additional testimony through Minelia Gallardo. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records. DBRO, KPYX, KCCO and WAGE-A.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about September 1, 2020 and/or September 10, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for benefits that was effective April 5, 2020. Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$256.00. The base period consisted of the four quarters of 2019. The claimant's highest-earnings base period quarter was the fourth quarter of 2019, when the claimant was paid wages totaling \$5,892.07. That amounts to an average weekly wage of \$453.24. QPS is not a base period employer for purposes of the claim year that began on April 5, 2020. The claimant made weekly claims for each of the weeks between April 5, 2020 and March 6, 2021. The claimant received benefits that included \$256.00 in regular benefits for each of the weeks between August 30, 2020 and October 31, 2020. The claimant also received \$300.00 in Lost Wages Assistance Payment(s) for the week that ended September 5, 2020.

The employer, QPS Employment Group, Inc., is a temporary employment agency. The claimant established his relationship with the employer in December 19, 2019 and most recently worked for the employer in a full-time temporary assignment at Helena Industries from February 7, 2020

to February 27, 2020, at which time the client had no further need for the claimant's services and ended the assignment. The assignment had paid \$13.00 an hour. The work hours had been 2:30 p.m. to 11:00 p.m. Monday through Friday. The work duties had involved packaging non-hazardous agricultural chemicals. The workplace was located in the southeast quadrant of the Des Moines metropolitan area. The claimant has at all relevant times resided north of the Capitol and just a couple blocks south of East Euclid Avenue. The claimant would arrange for his own transportation to and from the workplace. The claimant advises that he was without driving privileges through 2020 and asserts that he relied upon the Des Moines public transit system to get to and from work. However, the employer confirmed with the claimant that he had his own transportation prior to offering assignments. At no time did the claimant raise a concern about a lack of transportation.

On September 1, 2020, QPS recruiter Jasmine Adams called the claimant and offered the claimant a work assignment at B&G Foods in Ankeny. The recruiter told the claimant particulars of the proposed assignment. That included that the assignment would be full-time, long-term, that the work hours would be 7:00 a.m. to 3:30 p.m. Monday through Friday, that the assignment would pay \$14.50 an hour, and that the work would involve building pallet displays and packaging spices. The claimant refused the assignment. The claimant told the recruiter that he was trying to wait until he received his last unemployment check before he started looking for work. The employer documented nothing about claimant raising a concern about a lack of transportation when the employer offered the assignment.

On September 10, 2020, QPS recruiter Minelia Gallardo called the claimant and offered him an assignment at HJC in Des Moines. The recruiter provided the claimant with the particulars regarding the assignment. These included that the assignment would be full-time with first shift hours, 8:30 a.m. to 5:00 p.m. Monday through Friday, that the assignment would pay \$13.00 an hour, and that the assignment would involve warehouse work. The claimant refused the assignment. The claimant told the recruiter that he was going out of town, that he was still getting unemployment insurance benefits, and that he would call back once he was ready for work. The claimant asserts he would have been unable to secure bus service to the assignment. However, the employer confirmed the claimant had his own vehicle prior to offering the assignment. The claimant had been operating the vehicle without state authorizing driving privileges for at least a year.

There was no further contact between the employer and the claimant.

The claimant was not interested in finding employment in September 2020 and did not seek further employment until December 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

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. ... 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.

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 for refusing 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(14)(a)(b) provides:

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

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 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, it must first be established that a bona fide offer of work was made to the individual by personal contact 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence establishes that the employer made bona fide offers of suitable employment on both September 1, 2020 and September 10, 2020 that the claimant refused without good cause. Both offered assignments would have paid more than the average wage in the claimant's highest earning base period quarter. That base period wage amounted \$11.33 an hour. Both offered assignment offered work reasonably consistent with the unskilled labor the claimant had previously performed for the employer. There is no reason to believe the wage offered in connection with either offered assignment was less than a fair market wage. None of the other good cause exceptions in 96.5(3)(a) and (b) apply. The weight of the evidence establishes that the claimant was readily able to secure transportation when he had the will to do so, like when he wanted to travel out of town. A reasonable person would conclude the claimant would had been able to secure appropriate bus service to and from the offered assignments, if he had the will to do so. Where the claimant's testimony conflicted with the employer's testimony and other evidence, the administrative law judge found the employer's testimony and evidence more credible. The weight of the evidence indicates that the claimant belatedly at the appeal hearing concerns he did not raise with the employer at the time he refused the offered assignments. The evidence indicates the claimant's reason for refusing the assignments was he was receiving unemployment insurance benefits and, for that reason, did not want to be employed.

Effective August 30, 2020, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides, in pertinent part:

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.

The claimant was overpaid \$2,304.00 in regular benefits for the nine weeks between August 30, 2020 and October 31, 2020. The claimant is required to repay the overpaid benefits.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$300.00 in LWAP benefits the claimant received for the week that ended September 5, 2020.

DECISION:

The December 10, 2020, reference 05, decision is reversed. The claimant refused an offer of suitable employment on September 1, 2020 and again on September 10, 2020. Effective August 30, 2020, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$2,304.00 in regular benefits for the nine weeks between August 30, 2020 and October 31, 2020. The claimant is required to repay the overpaid benefits.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision regarding the \$300.00 in LWAP benefits the claimant received for the week that ended September 5, 2020.



James E. Timberland
Administrative Law Judge

June 29, 2021
Decision Dated and Mailed

jet/scn