

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH R NIBLE
Claimant

AEROTEK INC
Employer

APPEAL NO. 20A-UI-15700-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code Section 96.5(3) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 5, 2020, reference 01, decision that disqualified her for benefits, based on the deputy's conclusion that the claimant refused recall to suitable work on May 12, 2020. After due notice was issued, a hearing was held on January 27, 2021. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibit A, the appeal letter, was received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO & DBRO. The administrative law judge left the hearing record open for the limited purpose of allowing the claimant to submit her work search log for the period of September 6-26, 2020. The claimant submitted the log, which was received into evidence as Exhibit B.

ISSUE:

Whether the claimant refused recall to suitable work on or about May 12, 2020 without good cause.

Whether the claimant was able to work and available for work during the period of May 10, 2020 through September 26, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 15, 2020. The claimant made weekly claims for each of the weeks between March 15, 2020 and September 26, 2020. Until March 20, 2020, the claimant was employed by Aerotek, Inc., a temporary employment firm and was in a temp-to-hire work assignment at Wells Fargo. The claimant then commenced a brief leave of absence pursuant to Aerotek's COVID-19 policy and based on a concern about workplace safety. Shortly after the claimant went off work, Aerotek contacted the claimant to inquire whether she wished to return to the Wells Fargo assignment under a scheduling arrangement designed to reduce the risk of spreading COVID-19. The claimant expressed interest in returning. What followed was a series of false starts initiated and abandoned by Aerotek or Wells Fargo. The claimant continued to be interested in returning to

her assignment. On May 7, 2020, the claimant participated in an unpaid training session, which she believed would lead to return to her assignment at Wells Fargo, but which did not lead to her returning to the assignment. On May 12, 2020, and Aerotek recruiter contacted the claimant to have the claimant collect her work equipment from Aerotek so she could return to her assignment, which was about to end under the assignment terms. The claimant was at that time in discussion with her supervisor at Wells Fargo regarding being directly hired by Wells Fargo. The supervisor was also an Aerotek employee. The claimant asked the Aerotek recruiter whether she could defer collecting Aerotek equipment until she met with Wells Fargo personnel regarding whether she would be directly hired by Wells Fargo. Though the claimant remain in contact with and in discussion with her Aerotek supervisor at Wells Fargo, the Aerotek recruiter documented the claimant request for a brief delay in returning the Aerotek assignment as a work refusal. The claimant continued in her discussion with her supervisor and Wells Fargo. The period of the Aerotek assignment expired. Wells Fargo subsequently elected not to hire the claimant or other Aerotek staff in light of the COVID-19 pandemic.

The claimant continued to make weekly unemployment insurance claims during the time that her discussion with Aerotek and Wells Fargo unfolded. During that period and until September 5, 2020, Iowa Workforce Development had suspended the work search requirement. IWD reimposed the work search requirement effective September 6, 2020. During the period of September 6, 2020 through September 26, 2020 the claimant made two job contacts per week. The claimant discontinued her claim following the benefit week that ended September 26, 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. 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.

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 section 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.

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.

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

(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.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 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 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(2) 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.

(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.

The evidence in the record fails to establish a bona fide offer of recall to the suitable work or a definite refusal of recall to the Aerotek employment on or about May 12, 2020. The employer did participate in the appeal hearing and did not present any evidence to meet its burden of proof. The claimant's contact with the Aerotek recruiter on May 12, 2020 followed a series of false recalls to work wherein Aerotek indicated there was work and then advised the claimant there was not work. At the time of the contact on May 12, 2020, Aerotek once again indicated there was work and requested that the claimant collect equipment from Aerotek. The claimant did not refuse to return to Aerotek, but instead requested only a brief delay while she learned whether Wells Fargo intended to hire her directly, which had been the point of the temp-to-hire work assignment. The claimant had good cause for briefly delaying her return to the Aerotek assignment. The claimant continued in discussion with her Aerotek supervisor at Wells Fargo. The claimant's Aerotek assignment ended due to expiration of the period of the assignment. The claimant continued to be interested in returning to work. No disqualification with enter in connection with the purported May 12, 2020 work refusal.

The claimant was physically and mentally able to work is deemed available for work during the period when IWD suspended the work search requirement. That period ended September 5, 2020. During the period of September 6-26, 2020 the claimant engaged in an active and earnest search for new employment and was otherwise able to work and available for work.

DECISION:

The November 5, 2020, reference 01, decision is reversed. There was not bona offer of recall or definite refusal of recall to suitable work on May 12, 2020. If there had been, the claimant had good cause. No disqualification with enter in connection with the purported May 12, 2020 work refusal. The claimant was at all times since May 12, 2020 through September 26, 2020 been able to work and available for work. Benefits are allowed for the period of May 10, 2020 through September 26, 2020, provided the claimant is otherwise eligible.



James E. Timberland
Administrative Law Judge

February 12, 2021
Decision Dated and Mailed

jet/kmj