

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NANCY MESINAS ACEVEDO
Claimant

STAR HOTELS IA LLC
Employer

APPEAL NO. 21A-UI-13660-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (2)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 28, 2021, reference 02, decision that disqualified her for benefits, based on the deputy's conclusion that the claimant refused recall to suitable work with Start Hotels IA, L.L.C. on June 21, 2020. After due notice was issued, a hearing was held on August 11, 2021. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about June 21, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Star Hotels IA, L.L.C. on a full-time basis and last performed work for the employer on March 13, 2020, at which time the employer told the claimant there was no work for her. The employer did not thereafter recall the claimant to the employment. The claimant established an original claim for benefits that was effective June 14, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-3-b 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.

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.

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.

The evidence in the record establishes the employer did not recall the claimant to the employment subsequent to the claimant's March 13, 2020 last day of work. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving both an bona fide offer of suitable work or a definite refusal. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

DECISION:

The May 28, 2021, reference 02, decision is reversed. The employer did not offer recall to suitable work and the claimant did not refuse recall to suitable work on or about June 21, 2020. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

November 8, 2021
Decision Dated and Mailed

jet/kmj