

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARILU RANGEL**  
Claimant

**APPEAL NO. 11A-UI-15779-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 10/30/11**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Marilu Rangel filed a timely appeal from the December 8, 2011, reference 02, decision that denied benefits based on an Agency conclusion that she had rejected suitable work without justification on November 15, 2011. After due notice was issued, a hearing was held on January 10, 2012. Ms. Rangel participated. The employer provided a telephone number for the hearing and named a representative: Holly Carter at 402-331-3915. But the employer representative was not available at the designated number at the time of the hearing. The administrative law judge took official notice of the Agency's administrative record (DBRO) of the claimant's average weekly wages during her base period.

**ISSUES:**

Whether Ms. Rangel rejected a bonafide offer of suitable work on November 15, 2011.

Whether Ms. Rangel has been able to work and available for work since she established her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Marilu Rangel established a claim for unemployment insurance benefits that was effective October 30, 2011. The claim was in response to Ms. Rangel being laid off from a full-time, temporary employment work assignment at Palmer Candy in Sioux City effective November 3, 2011. Ms. Rangel had obtained that assignment through Advance Services, Inc. The assignment had been first shift. Ms. Rangel has a small child and had arranged appropriate childcare so that she could report for first shift work. Ms. Rangel has at all relevant times resided in Sioux City.

On November 7, 2011, an Advance Services representative contacted Ms. Rangel to offer a full-time temporary work assignment at Cloverleaf in Sioux City. The assignment was to begin the next day. The work hours were to be 6:30 a.m. to 5:30 p.m. The pay was to be \$7.50 per hour. Ms. Rangel accepted the assignment with the understanding that she was accepting full-time work. On Ms. Rangel's first day in the assignment, Cloverleaf sent her and other

temporary employees home between 12:30 and 1:00 p.m. because Cloverleaf had no additional work for them. Ms. Rangel left the assignment because the hours and the full-time nature of the assignment had been misrepresented.

On November 15, 2011, an Advance Services representative contacted Ms. Rangel to offer a full-time temporary work assignment. The assignment was to start the next day. The client business was located in South Sioux City, Nebraska, just across the river from Sioux City, Iowa. The wage was to be \$9.00 per hour. The shift was to be second or third shift, either 4:30 p.m. to 12:20 a.m. or 12:30 a.m. to 8:00 a.m. While Ms. Rangel had reliable daycare that would allow her to be available for first shift work, she did not have daycare available for second or third shift work. Ms. Rangel explained this to the Advanced Services representative as her reason for rejecting the proposed assignment.

Ms. Rangel had started her search for new employment as soon as she had been laid off from Palmer Candy and as soon as she had filed her claim for benefits. Each week, Ms. Rangel made contact, in person, online or otherwise with two or three prospective employers. During the first couple of weeks of her claim, Ms. Rangel had difficulty using the automated telephonic claim reporting system and was unable to enter her job contact information. Ms. Rangel went to her local Workforce Development office to resolve that issue and was able to properly report her job contacts thereafter. From the time she established her claim for benefits, Ms. Rangel has been able to work and available for full-time, first-shift work. Ms. Rangel has access to daycare from 5:30 a.m. to 4:30 p.m.

Ms. Rangel's highest earning base period quarter was the second of quarter of 2011, when her average weekly wages were \$284.46.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

The employer failed to participate in the hearing and thereby failed to present any evidence to support the notion that Ms. Rangel rejected an offer of suitable work without good cause. While the wage involved and the location of the proposed assignment would not prevent it from being suitable work, the proposed work hours did prevent the work from being suitable work for Ms. Rangel. In addition, the evidence fails to establish what exactly the proposed work discussed on November 15 would entail. Ms. Rangel had good cause to reject the offer of employment that Advance Service made on November 15, 2011. While Ms. Rangel remained available for full-time, first-shift work, her problem in obtaining appropriate daycare prevented her from being available for second-shift or third-shift work. A reasonable person would expect childcare to be more readily available during first shift hours and more difficult to obtain for second and third shift hours. Ms. Rangel's refusal of the proposed work would not disqualify her for benefits and she would remain eligible for benefits, provided she met all other eligibility requirements.

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".

871 IAC 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 weight of the evidence in the record establishes that Ms. Rangel has remained available for full-time, first shift employment since she established her claim for benefits and has engaged in an active and earnest search for such employment since she established her claim for benefits. Ms. Rangel has met the work availability requirement since October 30, 2011 and has been eligible for benefits since that date, provided she has met all other eligibility requirements.

**DECISION:**

The Agency representative's December 8, 2011, reference 02 decision is reversed. The claimant refused an unsuitable offer of work on November 15, 2011 and did so with good cause. The claimant has been able and available for work since establishing her claim for benefits. The claimant is eligible for benefits, provided she is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs