

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMONA BECERRA
Claimant

APPEAL NO. 08A-UI-01507-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRIS DANIELS
Employer

OC: 01/06/08 R: 12
Claimant: Appellant (2-R)

Section 96.5(3)(A) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Ramona Becerra filed a timely appeal from the February 5, 2008, reference 01, decision that denied benefits and that concluded she had refused an offer of suitable work. A hearing was scheduled for February 27, 2008 at 8:00 a.m. and both parties were properly notified by notice mailed on February 15, 2008. Neither party responded to the hearing notice instructions to provide a telephone number for the hearing and neither party participated in the hearing. The administrative law judge took official notice of the administrative file, which includes the documents submitted for or generated in connection with the February 4, 2008 fact-finding interview.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ramona Becerra was employed by Chris Daniels, doing business as National Farm and Forestry Services, L.L.C., as a temporary full-time egg production laborer from August 8, 2007 until October 6, 2007, when the employer's contract with Monsanto expired. The record provides no evidence regarding the wage paid to Ms. Becerra, Ms. Becerra's daily work hours or shift, or the location of the assignment.

On October 8, 2007, David Daniels, Owner/Manager, offered Ms. Becerra work in connection with a new contract with DeCoster. The new full-time assignment would pay \$9.00 per hour. The record provides no evidence regarding the proposed daily work hours or shift, or the location of the proposed assignment.

Prior to the employment with Chris Daniels, Ms. Becerra had established a claim for benefits that was effective January 7, 2007. Ms. Becerra's benefit eligibility under that prior claim expired on April 7, 2007, when Ms. Becerra reached her maximum benefit allowance. Ms. Becerra did not have an active claim for benefits at the time of the alleged offer of

employment with Chris Daniels and the alleged refusal. Ms. Becerra established a new claim for benefits that was effective January 6, 2008, approximately three months after the alleged offer of employment and refusal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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, 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.

871 IAC 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.

The employer has the burden of proving that Ms. Becerra is a disqualified for benefits based on a refusal of suitable work. See Iowa Code section 96.6(2). By failing to participate, the employer failed to produce any evidence beyond what appears in administrative file. The evidence in the record contains an assertion of an offer of employment, but fails to provide sufficient evidence to establish that a bona fide offer of employment actually occurred. Because the evidence fails to establish a bona fide offer of employment, the evidence also fails to establish a refusal of suitable employment. In addition, the evidence indicates that alleged offer and refusal occurred at a time when Ms. Becerra did not have an active claim for benefits and occurred prior to the effective date of the claim established January 6, 2008. Accordingly, even if there had been a refusal on October 8, 2007, that refusal would not disqualify the claimant for benefits in connection with the claim established January 6, 2008.

The claimant's failure to respond to the hearing notice called into question whether the claimant has met the able and available requirements of Iowa Code section 96.4(3) since establishing her claim for benefits.

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.

This matter will be remanded to the Claims Division for determination of the claimant's work availability since the effective date of the claim for benefits.

DECISION:

The Agency representative's decision dated February 5, 2008, reference 01, is reversed. There was no bona fide offer of employment on October 8, 2007, and, accordingly, no refusal of suitable employment. Even if there was a refusal, it occurred when the claimant did not have an active claim for benefits and, accordingly, would not disqualify her for benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. The matter is remanded for determination of the claimant's work availability since the effective date of the claim established January 6, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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