

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THORSHA M GARY
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL NO. 19A-UI-09837-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/24/19
Claimant: Respondent (1R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 6, 2019, reference 09, decision that allowed benefits to the claimant provided she met all other eligibility requirements, based on the deputy's conclusion that the claimant had good cause to refuse the employer's offer of employment of October 30, 2019. After due notice was issued, a hearing was held on January 9, 2020. Claimant Thorsha Gary participated. Mai Lor represented the employer and presented testimony through Jessica Stanley. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, WAGE-A and WAGE-B.

ISSUE:

Whether the claimant refused an offer of suitable work on October 30, 2019 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thorsha Gary established an original claim for unemployment insurance benefits that was effective February 29, 2019. QPS Employment Group, Inc. is one of the base period employers in connection with the claim year that began for Ms. Gary on February 29, 2019. Ms. Gary's only base period employment with QPS was a full-time, temporary work assignment at Birch Cabinets that started in August 2018 and that Ms. Gary completed in October 2018. The assignment paid \$9.00 per hour. The assignment was in Waterloo, where Ms. Gary resides. The work hours for the assignment were Monday through Thursday, 5:30 a.m. to 3:30 p.m. Ms. Gary had not had any more recent employment with QPS.

In April 2019, Ms. Began full-time employment as a road construction flagger with Midwest Contractors, Inc. Ms. Gary last performed work with Midwest Flaggers on or about November 20, 2019.

On September 19, 2019, Ms. Gary contacted QPS to inquire about work. Ms. Gary told QPS Recruiter that she could work first shift or third shift, would accept a wage of \$10.00 per hour, and could travel. Ms. Stanley recorded the contact in the QPS record keeping system. On October 30, 2019, Ms. Stanley contacted Ms. Gary about an available assignment at Waverly Plastics Company, Inc. Ms. Stanley spoke directly with Ms. Gary and told Ms. Gary the

assignment hours were 10:00 p.m. to 6:00 a.m., Sunday through Thursday, and would pay \$10.00 per hour. Ms. Gary told Ms. Stanley that she could not work third shift and declined the assignment. Ms. Gary was still working for Midwest Contractor's at the time the position was offered and had not had an active claim for unemployment insurance benefits since she had begun the employment with Midwest Contractors. Ms. Gary had childcare issues that affected her availability for third-shift work. Ms. Gary did not reopen her claim for unemployment insurance claim until November 17, 2019, when Midwest Contractors had no more work for her at the time.

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. ...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(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(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(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The weight of the evidence establishes that Ms. Gary had good cause to refuse an offer of employment from QPS on October 30, 2019, based on the fact that she was at that time still gainfully employed by Midwest Contractors, Inc. Ms. Gary's refusal would not disqualify her for unemployment insurance benefits. Ms. Gary is eligible for benefits, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for determination of whether Ms. Gary is still appropriated coded as group 3, job-attached claimant or whether she should be updated to group 6, non-attached status.

DECISION:

The December 6, 2019, reference 09, decision is affirmed. The claimant had good cause to refuse an offer of work on October 30, 2019. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn