

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLLEEN RADCLIFF
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 24A-UI-02646-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/07/24
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On March 5, 2024, Colleen Radcliff (claimant) filed a timely appeal from the February 29, 2024 (reference 03) decision that disqualified the claimant for benefits, based on the deputy's conclusion that that claimant refused an Aventure Staffing & Professional offer of suitable work on February 3, 2024. After due notice was issued, a hearing was held on March 20, 2024. Claimant participated. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, NMRO, WAGE-A and IowaWORKS.gov.

ISSUES:

Whether the claimant is refused an offer of suitable employment without good cause on or about February 3, 2024.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Colleen Radcliff (claimant) established an original claim for benefits that was effective January 7, 2024. The claimant did not knowingly file a claim for benefits in connection with the week that ended January 13, 2024. On January 25, 2024, the claimant went to the Spencer IowaWORKS Center and met with an IWD representative. In connection with the January 25, 2024 contact, the claimant made an electronic weekly claim for the week that ended January 20, 2024. In connection with the January 25, 2024 contact and IWD representative entered weekly claim information for the claimant concerning the week that ended January 13, 2024. The claimant had not expected to receive benefits for the week that ended January 13, 2024.

Since the claimant submitted the electronic weekly claim on January 25, 2024, the claimant has continued to file consecutive weekly claims. IWD paid benefits for each of the seven weeks between January 7, 2024 and February 24, 2024. Though the claimant filed weekly claims for the weeks ending March 2, 9 and 16, 2024, IWD has not paid benefits for those weeks.

The claimant's base period consists of the fourth quarter of 2022 and the first, second and third quarters of 2023. The highest earnings base period quarter was the second quarter of 2023 during which that claimant was paid wages totaling \$10,991.51, which amounted to an \$845.50 average weekly wage for the quarter. 90% of 845.50 is \$760.95. 80% of \$845.50 is \$676.40.

On Friday, January 26, 2024, Aventure Staffing spoke with the claimant by phone and offered the claimant a full-time, temp-to-hire assignment with client Pivot Point in Spencer. The claimant has at all relevant times resided in Spencer. The claimant had applied for the Pivot Point position through Aventure Staffing on January 18, 2024. The claimant had interviewed for the position on January 24, 2024. Aventure Staffing told the claimant that the position would be an administrative assistant position and that the claimant would be assisting the warehouse manager. The work hours would be 7:00 a.m. to 3:30 p.m., Monday through Friday. The pay would be \$17.00 an hour, which equated to \$680.00 a week. The work environment would be an office inside a warehouse facility. The claimant would be the only employee in the office. The assignment would start as soon as possible. The assignment would last 500 hours, by which time Pivot Point would decide whether to hire the claimant as its employee. Aventure agreed to give the claimant until Monday, January 9, 2024 to decide whether to accept the assignment.

Throughout the base period, the claimant had performed full-time customer service work for an Internet Service Provider in Spencer.

On Monday, January 29, 2024, the claimant notified Aventure that she was declining the assignment at Pivot Point. The claimant had decided she did not wish to be the only employee in an office and would prefer to work as part of a group of office workers so that she could socialize with her coworkers. The claimant also decided that she did not want to work at Pivot Point due to that company's affiliation with Syngenta. The claimant perceives Syngenta as being adverse to the interests of farmer's which the claimant deems inconsistent with her values and preferences. The claimant also considered the offered wage when making her decision to refuse the offer employment and consulted with an IWD representative prior to the refusal.

The claimant reported the work refusal to IWD when she made her weekly claim for the week of January 28 through February 3, 2024.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 week of unemployment.

(b) Ninety percent, if the work is offered during the second through the third week of unemployment.

(c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.

(d) Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.

(e) Sixty percent, if the work is offered after the eighth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 87124.24(15) provides as follows:

(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

b. The individual's physical fitness.

c. Prior training.

d. Length of unemployment.

e. Prospects for securing local work by the individual.

f. The individual's customary occupation.

g. Distance from the available work.

h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.

i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.

k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

I. Whether the individual would be required to join or resign from a 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.

The evidence in the record establishes a bona fide offer of employment on Friday, January 26, 2024, which was within the third week of the unemployment insurance claim. The evidence also establishes definite refusal on Monday, January 29, 2024, during the fourth week of the claim.

The determination of whether the work offered by Aventure Staffing was suitable work would include consideration of wage offered and the week of the claimant. The claimant would have good cause to refuse an offer of employment during the third week of the claimant that offered less than 90 percent of her average weekly claim during the highest-earning base period quarter. 90% of 845.50 is \$760.95. The offered assignment only paid \$680.00 a week, which made the offered employment unsuitable. Aside from the offered wage, the offered work was in all other respects suitable work. The claimant had good cause to refuse the Aventure Staffing due to the offered wage. No disqualification will enter in connection with the refusal of the Aventure Staffing assignment at Pivot Point on January 26, 2024.

DECISION:

The February 29, 2024 (reference 03) decision is REVERSED. The Aventure Staffing assignment offered on January 26, 2024 was unsuitable work due to the offered wage. The claimant had good cause to refuse the offered assignment based on the offered wage. No disqualification will enter in connection with the refusal of the Aventure Staffing assignment at Pivot Point that was offered on January 26, 2024 and refused on January 29, 2024.

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

March 26, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.