

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TABATHA R STREIL  
711 E 15<sup>TH</sup> ST  
SPENCER IA 51301-4615**

**MEDI-CLAIM SOLUTIONS LLC  
2303A W 18<sup>TH</sup> ST  
PO BOX 466  
SPENCER IA 51301**

**Appeal Number: 06A-UI-04944-DT  
OC: 02/19/06 R: 01  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Medi-Claim Solutions, L.L.C. (employer) appealed a representative's April 27, 2006 decision (reference 06) that concluded Tabatha R. Streil (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2006. The claimant participated in the hearing. Cindy Donahue-Greer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse a offer of suitable work without good cause?

#### FINDINGS OF FACT:

The claimant worked for the employer's predecessor owner from November 1, 2004 through February 17, 2006 as a full time receptionist at the hourly rate of \$10.25 per hour. On February 3, 2006, the predecessor owner informed the claimant and the other employees that February 17 would be their last date of employment. The administrative law judge notes there has been a prior representative's determination issued on March 15, 2006 (reference 02) which concluded that the separation was a layoff for lack of work on the part of the predecessor owner; that decision was not appealed and became final.

The employer became the successor owner as of February 18, 2006. The claimant established an unemployment insurance benefit year effective February 19, 2006. The administrative law judge notes that there has been a prior representative's determination issued on March 15, 2006 (reference 03) which concluded that an offer by Ms. Donahue-Greer, the owner of the successor business, to the claimant on February 8, 2006 to employ the claimant in her prior position and the claimant's refusal of that offer was not disqualifying because the claimant did not have an open claim at the time of the offer. That decision was appealed and affirmed by a decision of an administrative law judge issued on April 20, 2006 in 06A-UI-03335-BT; that decision was not appealed and has become final.

While Ms. Donahue-Greer did hire someone into the receptionist position upon the claimant's earlier refusal, that person subsequently requested and was permitted to move into a vacant data-entry position. On April 21, 2006, Ms. Donahue-Greer sent the claimant a letter offering the claimant employment in her prior receptionist position at her prior terms of employment to begin as soon as possible; a deadline for response was given as April 26, 2006. Late on April 25, 2006, the claimant came into the employer's offices. She was convinced that there was no bona fide vacancy in the receptionist position, but Ms. Donahue-Greer assured her that the vacancy did exist and that the offer to reemploy the claimant's position effective immediately stood. The claimant declined, as she still felt the offer was not bona fide, and she did not wish to work for Ms. Donahue-Greer in any event, as Ms. Donahue-Greer had been the manager of the business under the prior owner; the claimant felt she had no trust in Ms. Donahue-Greer, that she did not want to return to work in an environment she had found stressful due to perceived gossiping and favoritism.

The claimant has secured part time employment with another employer; she did file weekly claims for partial unemployment insurance benefits reporting her offsetting wages from her part time employer through the week ending Saturday, April 29, 2006. No weekly claims have been filed since that date.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code section 96.5-3-a 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.

a. 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:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

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

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(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.

In this case, there was a bona fide offer of work<sup>1</sup> and a definite refusal of work during an open claim year. While the claimant may have had issues with her prior employer, she did not "previously quit" the predecessor owner. Therefore, while she may have had personality issues with the employer's manager and owner, the continuation of that management is not a good cause to make the offer of her exact same position unsuitable. Since the claimant could not reasonably have returned to the employment until after the majority of that workweek had passed, benefits are denied as of April 30, 2006. Since the claimant has not made any weekly claim since the week ending April 29, 2006, there has been no overpayment of benefits.

DECISION:

The representative's April 27, 2006 decision (reference 06) is reversed. The claimant did refuse a suitable offer of work. As of April 31, 2006 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/kkf

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<sup>1</sup> Whether the receptionist position was presently vacant as of April 25, 2006 is immaterial to determining whether the offer was "bona fide" – worse case scenario, if the claimant accepted the offer and the receptionist position ended up being unavailable, the claimant could have declined being placed into another position other than the one she had accepted.