

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNDA L MURRAY**  
Claimant

**APPEAL NO: 11A-UI-04820-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/27/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.3(5)a – Refusal of Suitable Work  
871 IAC 24.24(8) – Refusal Disqualification Jurisdiction

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 6, 2011 determination (reference 02) that disqualified her from receiving benefits as of March 3, 2011, because she refused the employer's offer of suitable work. The claimant participated in the hearing with her attorney, Eric Benne. John Fiorelli represented the employer. Tad Gallagher, the store director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of March 3, 2011.

**ISSUE:**

Did the employer's offer and a refusal occur within the claimant's benefit year?

**FINDINGS OF FACT:**

The claimant started working for the employer in September 2005 as a part-time dietician. She worked 16 to 20 hours a week. In December 2010, Gallagher and the other Burlington store director talked to the claimant about working full time by working at both stores. In December 2010, the claimant indicated she was interested in pursuing this full-time opportunity. The store directors did not talk about compensation in December. Instead, the store directors indicated they would further explore this possibility and get back to her about compensation for this position.

By mid-January 2011, the store directors talked to the claimant again and indicated what the employer was considering paying her as a full-time employee. The claimant considered the employer's compensation low and gave the store directors salary information for an experienced dietician. During this meeting, the claimant did not specifically reject the employer's salary offer. The employer understood the claimant had not accepted the employer's proposed compensation package. Since the parties had not reached an agreement, the claimant understood the employer would get back to her in a few weeks to talk about compensation again.

Either at this meeting or a short time later, the employer decided the salary information the claimant provided was more than the employer was willing to pay. The employer did not specifically tell the claimant that if she did not accept the initial compensation proposal she would not have a job. Gallagher told the claimant that the other store director wanted to keep his options open.

In February 2011, the other store manager hired a dietician. When the claimant learned about this (by February 24), she assumed the full time offer of work no longer existed. Ultimately, the employer eliminated the claimant's part-time job and had the new dietician work at both stores as a full time employee. The claimant's employment ended on March 3, 2011. She established a claim for benefits during the week of February 27, 2011.

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

A claimant is not qualified to receive unemployment insurance benefits if she refuses an offer of suitable work without good cause. Iowa Code § 96.5(3)a. Before a disqualification can be imposed for refusing a job offer, both the offer of work and the claimant's refusal must occur with the individual's benefit year. 871 IAC 24.24(8). Since the claimant did not establish a claim for benefits until the week of February 27, 2011, the evidence shows that both the offer of work and any potential refusal occurred **BEFORE** the claimant established her claim for benefits. Therefore, the claimant cannot be disqualified from receiving benefits based on a refusal that occurred before she established her claim. The claimant is qualified to receive benefits as of March 3, 2010.

#### **DECISION:**

The representative's April 6, 2011 determination (reference 02) is reversed. Since the employer's offer and the claimant's "refusal" occurred before February 24, 2011, a disqualification for refusing an offer of work cannot be imposed on the claimant who did not establish a claim for benefits until the week of February 27, 2011. The claimant remains qualified to receive benefits as of March 3, 2011, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css