

**IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS, UI APPEALS BUREAU**

LORI A DALTON
Claimant

J PETTIECORD INC
Employer

APPEAL NO. 23A-UI-03747-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/12/23
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On April 12, 2023, the employer filed a timely appeal from the April 7, 2023 (reference 03) unemployment insurance decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that on February 27, 2023 the claimant did not accept an offer of work with the employer, but did not have an unemployment insurance claim in effect at the time. After due notice was issued, a hearing was held on April 25, 2023. Lori Dalton (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Rusty Murl represented the employer and presented additional testimony through Robert Dixon. Exhibits 1 through 4 were received into evidence and consisted respectively of the reference 01 decision with handwritten appeal thereon, the reference 01 notice of fact-finding interview, the reference 03 decision, and the reference 03 notice of fact-finding interview. The administrative law judge took official notice of the following IWD administrative records: DBRO and KCCO.

ISSUES:

Whether the claimant refused an offer of suitable employment without good cause.
Whether the refusal occurred at a time when the claimant did not have a valid unemployment insurance claim.

FINDINGS OF FACT:

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

Lori Dalton (claimant) was employed by J. Pettiecord, Inc., a construction company, as a full-time shop laborer until February 3, 2023, when she voluntarily quit the employment to accept other employment. See the March 30, 2023 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer of liability, based on the deputy's conclusion the claimant voluntarily quit without good cause attributable to the employer to accept other employment, but did not obtain other employment. The claimant's final pay was \$18.00 an hour. The claimant's work hours were 7:00 a.m. to 4:00 p.m., Monday through Friday. The claimant's duties involved cleaning up around the employer's shop. Robert Dixon, Shop Manager, was the claimant's supervisor.

On February 17, 2023, the claimant contacted Mr. Dixon by text message and asked to meet to discuss a possible return to the employment. On February 17, 2023, the claimant met with Mr. Dixon. At that time, Mr. Dixon offered the claimant employment under the same conditions as prior to the separation. At that time, the claimant verbally accepted the offer of employment. The parties agreed to a Monday, February 20, 2023 start date. The claimant thereafter contacted the employer multiple times and asserted a need to defer her new start date. The claimant asserted her child was ill. The claimant asserted that she needed to assist her mother. The claimant last made contact with the employer on February 21, 2023, at which time she asserted she could not yet return to work due to child being ill and due to a friend's serious health issue. The claimant attempted to further defer her return to Monday, February 27, 2023, but the employer advised the claimant they needed her no later than February 22, 2023. The claimant did not report on February 22, 2023 and made no further contact with the employer. On February 23, 2023, the employer sent the claimant a text message indicating the employer could no longer hold the position.

The claimant established an original claim for benefits that was effective March 12, 2023. The claimant made weekly claims for the weeks ending March 18 and 25, 2023 and then discontinued the claim. This employer is the sole base period employer. The claimant highest earning base period quarter was the third quarter of 2022, during which the employer paid wages totaling \$10,811.86, a weekly average of \$831.68.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) & (b) 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.

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(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.

Iowa Admin. Code r. 871-24.24(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.
- l. 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 indicates there was a bona fide offer of suitable work made on February 17, 2023. The offered employment was the same employment the claimant had left a couple weeks earlier. Despite the claimant's initial verbal acceptance of the new employment, the claimant's subsequent actions were sufficient to communicate a definite refusal, with that refusal being effective no later than February 23, 2023. Because the offer and refusal predated the March 12, 2023 effective date of the unemployment insurance claim, no disqualification may enter based on the refusal. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

DECISION:

The April 7, 2023 (reference 03) decision is affirmed. The offer and refusal at issue predated the unemployment insurance claim and, therefore, cannot serve as a basis for disqualifying the claimant for benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

Nothing in this decision regarding work refusal alters the March 30, 2023 (reference 01) decision regarding the February 3, 2023 separation.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

April 27, 2023
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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.