

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YURI F GARCIA-VENTURA
Claimant

ADVANCE SERVICES
Employer

APPEAL 17A-UI-02133-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/15/17
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Yuri F. Garcia-Ventura (claimant) filed a timely appeal from the February 17, 2017, reference 03, unemployment insurance decision that denied benefits based on the determination that she refused suitable offer of work from Advance Services (employer). After due notice was issued, a telephone conference hearing was held on March 20, 2017. The claimant and her friend, David Rangel, participated on her behalf. The employer participated through Risk Management Melissa Lewien.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer made an offer of work to claimant via telephone on January 10, 2017. That offer was for a job located in Dysert, Iowa, 40.3 miles from the claimant's home, performing the same job she had previously performed in Toledo, Iowa, 20.4 miles from her home, on first shift working 40 hours per week. The wage offered for the job is \$13.50, which is comparable to the prevailing rate of pay for similar work in the area and the same wage the claimant earned at the Toledo job. The offer was made in the first week of unemployment after reactivating her previous year's claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant had good cause for refusing the employer's offer of work.

Iowa Code § 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. (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.

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 offer was suitable as it was the same pay as her previous position and offered during her first week of unemployment. However, the claimant had a good cause reason for refusing the

offer as she does not reside in the area where the job was offered and the doubled commute time and distance was not reasonable for the claimant.

DECISION:

The February 17, 2017, reference 03, decision is reversed. The claimant failed to accept a suitable offer of work but had a good cause reason for doing so. Benefits are allowed, provided the claimant is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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