

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SASHA GOODYK
Claimant

THE IOWA CLINIC PC
Employer

APPEAL NO. 19A-UI-06759-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/26/19
Claimant: Appellant (4)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Sasha Goodyk filed a timely appeal from the August 16, 2019, reference 05, decision disqualified Ms. Goodyk for benefits, based on the deputy's conclusion that Ms. Goodyk refused an offer of suitable work with the Iowa Clinic, P.C. on June 26, 2019. After due notice was issued, a hearing was held on September 19, 2019. Ms. Goodyk participated. The Iowa Clinic, P.C. did not register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-06760-JTT. Exhibits A and B and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether Ms. Goodyk refused an offer of suitable work with the Iowa Clinic, P.C. on or about June 26, 2019 without good cause.

Whether Ms. Goodyk has been able to work and available for work within the meaning of the law during the period of June 23, 2019 through September 14, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sasha Goodyk established an original claim for benefits that was effective May 26, 2019. Since that time, Ms. Goodyk has made consecutive weekly claims. Ms. Goodyk most recently made a weekly claim for the week that ended September 14, 2019. Ms. Goodyk's base period consists of the four calendar quarters in 2018. Ms. Goodyk's highest earning base period quarter was the fourth quarter of 2018, when her wages from three employments totaled \$14,718.00. Ms. Goodyk's average weekly wage during her highest earning base period quarter was \$1,132.15. The three base period employments were a full-time medical transcriptionist employment with Pella Regional Health Center, a part-time treatment notes proof reading employment with Iowa Orthopedic Center, P.C., and a part-time, on-call employment with WesleyLife. Ms. Goodyk performed her work for Pella Regional Health Center and Iowa Orthopedic Center from her home in Reasnor, Iowa. Ms. Goodyk's work hours for Pella Regional Center had been 4:30 a.m. to 11:00 a.m. Her work hours for the Iowa Orthopedic

Center were 11:00 a.m. to 4:00 p.m. Ms. Goodyk's pay for the Pella Regional Health Center employment was \$17.50 per hour. Her pay for the Iowa Orthopedic Center was \$17.23 per hour. Ms. Goodyk established her unemployment insurance claim in response to her full-time medical transcriptionist job at Pella Regional Health Center being eliminated. Reasnor is 12 miles north of Pella, 16 miles southeast of Newton, and 39 miles east of downtown Des Moines. Because Ms. Goodyk performed the Pella Regional Health Center work and the Iowa Orthopedic Center work from home, she had no commute and no commuting expense for those employments.

On June 24, 2019, during the fifth week of Ms. Goodyk's unemployment insurance claim, The Iowa Clinic, P.C. offered Ms. Goodyk full-time employment as a front desk clerk at its UnityPoint-Methodist Hospital location in downtown Des Moines. The Iowa Clinic is not a former employer of Ms. Goodyk. The work hours would be 8:30 a.m. to 5:00 p.m., Monday through Friday. The pay would be \$19.24 per hour or \$769.60 for a 40-hour work week. In light of the proposed work hours, Ms. Goodyk would have had to leave her employment with Iowa Orthopedic Center to accept the Iowa Clinic employment. On June 26, 2019, Ms. Goodyk refused the offer of employment with The Iowa Clinic due to the commute. Ms. Goodyk also believed the offered wage was not sufficient to justify the commute and abandonment of the Iowa Orthopedic Center employment. Ms. Goodyk also viewed the proposed work duties as a step down from the work she had been performing for Pella Regional Health Center and Iowa Orthopedic Center.

Ms. Goodyk continued her search for full-time employment closer to home and continued to report her weekly wages from the Iowa Orthopedic Center and WesleyLife. Ms. Goodyk picked up extra home healthcare shifts with WesleyLife to minimize her use of unemployment insurance benefits while she continued her search for another full-time position closer to home. For most of the weeks between June 23, 2019 and September 14, 2019, Ms. Goodyk's wages did not exceed her \$485.00 weekly benefit amount by more than \$15.00. However, during some weeks, Ms. Goodyk picked up sufficient hours at WesleyLife to earn combined wages that exceeded her weekly benefit amount by more than \$15.00. Such was the case during the weeks that ended June 29, July 20, August 31, and September 14, 2019. Ms. Goodyk had not received benefits for those weeks.

During the week of September 1-7, 2019, Ms. Goodyk accepted new full-time employment with Pella Regional Health Center and discontinued her job search. During the week that ended September 7, 2019, Ms. Goodyk applied for no jobs and reported zero job contacts. Ms. Goodyk has not received benefits for that week.

During the week that ended September 14, 2019, Ms. Goodyk reported two job contacts based on guidance she received from an Iowa Workforce Development representative, but did not actually make any job contacts. Ms. Goodyk has not received benefits for that week.

Ms. Goodyk has at all relevant times between June 23, 2019 and September 14, 2019, been physically and mentally able to work.

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 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(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.

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(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.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The weight of the evidence establishes that The Iowa Clinic made a bona fide offer of reemployment on June 24, 2019 and that Ms. Goodyk refused the offer on June 26, 2019. Both the offer and the refusal occurred during Ms. Goodyk's claim year. Indeed, the offer and refusal were made during the same week, the week that ended June 29, 2019. That week was the fifth week of Ms. Goodyk's claim. Given that Ms. Goodyk would have had to leave the Iowa Orthopedic employment to accept the full-time employment at The Iowa Clinic, and given that The Iowa Clinic employment offered wages that were less than the \$1,132.15 that Ms. Goodyk had averaged during her highest-earning base period quarter, the offered work was "unsuitable" for unemployment insurance eligibility purposes. In light of Ms. Goodyk's base period wages being based on work at home or close to home, the 80-mile round trip commute to the prospective Iowa Clinic employment also made that employment "unsuitable" within the meaning of the law. In any event, Ms. Goodyk was working to such an extent during the week that ended July 29, 2019 that she was effectively removed from the larger labor market that week. For that week, her wages exceeded her weekly benefit amount by more than \$15.00. Based on the extent to which Ms. Goodyk was working that week, she did not meet the "availability" requirement set forth at Iowa Code section 96.4(3) (see below). See also Iowa Admin. Code r. 871-24.23(23) (below). For all these reasons, Ms. Goodyk's June 26, 2019 refusal of the Iowa Clinic's work offer would not disqualify her for unemployment insurance benefits.

The administrative law judge must further address the availability issue. Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(18), (23) and (27) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a

claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

The evidence indicates that Ms. Goodyk has at all relevant times between June 23, 2019 and September 14, 2019, been physically and mentally able to work.

Ms. Goodyk was working to such an extend during the weeks that ended June 29, July 20, August 31, and September 14, 2019 that she was effectively removed from the larger labor market and did not meet the availability requirement. Ms. Goodyk was not eligible for benefits for those weeks and did not receive benefits for those weeks.

When Ms. Goodyk made her weekly claim for the week that ended September 7, 2019, she reported zero contacts. Ms. Goodyk had in fact made zero job contacts that week, following her acceptance of the Pella Regional Health Center job that has not yet started. Ms. Goodyk did not meet the availability requirement for the week that ended September 7, 2019 and is not eligible for benefits for that week.

During the weeks that ended July 6, July 13, July 27, August 3, August 10, August 17, and August 24, 2019, Ms. Goodyk was available work, engaged in an active and earnest search for new full-time employment, and eligible for unemployment insurance benefits for each of those weeks provided she meets all other eligibility requirements.

DECISION:

The August 16, 2019, reference 05, decision is modified as follows. The claimant refused unsuitable work on June 26, 2019 at a time when she did not meet the availability requirement. The work refusal did not disqualify the claimant for unemployment insurance benefits. The claimant was able to work during each week between June 23, 2019 and September 14, 2019. The claimant was available for work within the meaning of the law during the weeks that ended July 6, July 13, July 27, August 3, August 10, August 17, and August 24, 2019 and is eligible for unemployment insurance benefits for each of those weeks provided she meets all other eligibility requirements. The claimant did not meet the availability requirements during the weeks that ended June 29, July 20, August 31, September 7, and September 14, 2019 and is not eligible for benefits for those weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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