

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASSANDRA J MCBRIDE**  
Claimant

**APPEAL NO. 15A-UI-06903-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JANET MILLER**  
**DBA SWEET TREAT**  
Employer

**OC: 05/31/15**  
**Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 11, 2015, reference 02, decision that allowed benefits to the claimant, provided she was otherwise eligible, based on an Agency conclusion that the claimant did not have a claim for benefits on May 1, 2015 when the claimant did not accept an offer of employment. After due notice was issued, a hearing was held on July 21, 2015. Claimant Cassandra McBride participated. Janet Miller represented the employer. The administrative law judge took official notice of the Agency's administrative record of the wages and benefits paid to the claimant (DBRO, WAGEA, and KCCO).

**ISSUES:**

Whether Ms. McBride is disqualified for benefits based on a work offer and refusal.

Whether Ms. McBride has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Cassandra McBride established a claim for benefits that was effective May 31, 2015. Ms. McBride established the claim in response to a May 26, 2015 layoff from her full-time or near full-time employment with Compass Two, L.L.C. Ms. McBride had begun the employment at Compass Two, L.L.C., in August 2014, at the start of the 2014-2015 academic year. In that employment, Ms. McBride worked as a lunch lady at Fellows Elementary school in Ames. Ms. McBride's layoff occurred in connection with the 2014-2015 academic year coming to an end. Ms. McBride expects to be recalled to the employment with Compass Two, L.L.C., at the start of the 2015-2016 academic year in August 2015.

When Ms. McBride established her claim for benefits, Workforce Development categorized her as a Group 3 claimant, someone who was job attached, but temporarily laid off. Because Ms. McBride was deemed job attached, the Agency would not have put Ms. McBride on notice

that she was required to engage in an active and earnest work search in order to be deemed eligible for benefits. When Ms. McBride made her weekly claims reports, the Agency's claims reporting system did not prompt Ms. McBride to report job contacts. During the period of the summer layoff, Ms. McBride applied at a couple of discount stores, applied at Hy-Vee, registered with Manpower, but did not otherwise seek new employment.

From May 1, 2014 until September 30, 2014, Ms. McBride has worked as a part-time, seasonal ice cream scooper at Sweet Treat, a seasonal ice cream business operated by Janet Miller and her husband and located in Jewell. The period of employment corresponded to the employer's business season. Sweet Treat's hours of operation were 6:00 p.m. to 9:00 p.m. Ms. McBride was residing with her mother and step-father in Jewell at the time she was employed by Sweet Treat. Ms. McBride is the parent of a toddler. While Ms. McBride was working for Sweet Treat, she was able to have her mother or older girls from church babysit her child. The work at Sweet Treat paid \$10.00 per hour, more than similar work at other similar businesses.

As the Millers prepared for Sweet Treat's 2015 business season, they desired to have Ms. McBride return to perform the same work she had worked the previous season for the same pay. In March or April, the Millers met with Ms. McBride at her mother's house in Jewell and offered her employment to start on May 1, 2015. The parties discussed that the proposed employment would provide the same hours, duties, and pay. Ms. McBride told the Millers that she would consider their offer and get back to them. Ms. McBride had actually decided not to return to the employment, but did not share that with the Millers at the time of the discussion. Ms. McBride did not get back to the Millers. At the time of the discussion with the Millers, Ms. McBride was still performing work in her full-time or near full-time job at Compass Two, L.L.C. At the time of the discussion, Ms. McBride had not yet established her claim for benefits.

On May 21, 2015, Ms. McBride moved from her mother and step-father's home in Jewell to her own residence in Huxley. Ms. McBride estimates that the commute from Huxley to Jewell is 35-40 miles.

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

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times her weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

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 § 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 Code section 96.5(3)(b) states that work will not be deemed suitable work if the open position is available due a labor dispute, if the wages, hours or other conditions are less favorable than similar work in the locality, or if accepting the work would require joining or refusing to join a labor union.

Most importantly for this case, Iowa Administrative Code rule 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 ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... 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 work offer the Miller's made in March or April 2015 cannot serve as a basis for disqualifying Ms. McBride for unemployment insurance benefits, or for relieving the employer of liability for benefits, in connection with her May 31, 2015 claim for benefits. This is because the offer, and the effective refusal, occurred before Ms. McBride had established a claim for unemployment insurance benefits.

Iowa Code § 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(21) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers.

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

Even though Ms. McBride's layoff from Compass Two, L.L.C., has exceeded four weeks, given the nature of the work and the manner in which Workforce Development has thus far treated her claim, Ms. McBride has to this point reasonably believed she was temporarily unemployed and not required to make an active and earnest search for new employment to be eligible for benefits. However, given the length of the layoff period, the administrative law judge concludes that the law now requires Ms. McBride to engage in an active and earnest search for new employment, rather than simply wait to be recalled to Compass Two, L.L.C. Ms. McBride has been exempt from the work search requirement through the benefit week that ends July 25, 2015, has met the able and available requirement during that period, and is eligible for benefits, provided she meets all other eligibility requirements. Effective July 26, 2015, Ms. McBride must make an active and earnest search for new employment by making at least two job contacts per week and must keep a log of her job contacts.

During the July 21, 2015 appeal hearing, the employer made an additional offer of employment and Ms. McBride deferred further discussion of the matter until she could "speak with her mother." Ms. McBride's response suggested a work refusal without wanting to state so clearly. The administrative law judge notes Ms. McBride's changed circumstances, mainly the move to Huxley that predates her claim for unemployment insurance benefits. The commuting distance from Huxley to Jewell is enough to at this point make the work at Sweet Treat no longer suitable work in light of much closer labor markets in Huxley, Ames and Ankeny. See Iowa Administrative Code rule 871 IAC 24.24(15)(g). Ms. McBride's unavailability for work at Sweet Treat in Jewell would not prevent her from satisfying the work availability requirement set forth at Iowa Code section 96.4(3).

#### **DECISION:**

The June 11, 2015, reference 02, is modified as follows: The offer of employment in March or April 2015 predated the claim for benefits and cannot serve as a basis for disqualifying the claimant for benefits or relieving the employer's account of liability for benefits. The claimant has reasonably believed that she has been temporarily laid off through the benefit week that ended July 25, 2015. The claimant has satisfied the able and available requirement through that week and is eligible for benefits through that week, provided she is otherwise eligible.

Effective July 26, 2015, the claimant is no longer deemed temporarily laid off and must make an active and earnest search for new employment by making at least two job contacts per week and must keep a log of her job contacts. The work in Jewell is no longer suitable work in light of the commuting distance from Huxley and labor markets closer to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs