

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATALIE SLOAN
Claimant

APPEAL NO: 14A-UI-01500-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC
Employer

OC: 10/13/13
Claimant: Respondent (2)

Iowa Code § 96.4-3 - Availability for Work
Iowa Code § 96.5-3-a - Refusal of Suitable Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Midwest Professional Staffing, LLC (employer) appealed an unemployment insurance decision dated January 31, 2014, reference 03, which held that Natalie Sloan (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2014. The claimant participated in the hearing. The employer participated through Angela Essink, Recruiting Supervisor.

ISSUE:

The issue is whether the claimant is able and available, and if so, whether she refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits as of October 13, 2013, and her average weekly wage paid during the highest quarter of her base period is \$522.31. This works out to an hourly rate of \$13.06. The claimant's base period includes the third and fourth quarters of 2012 and the first and second quarters of 2013.

The employer is a temporary employment agency and the claimant worked for the employer in an assignment from November 7, 2013, through January 3, 2014. She worked as a receptionist earning \$12.00 per hour. On January 6, 2014, the employer offered the claimant an interview as a receptionist and she was interested but the job fell through. She told the employer that day that she would not work for less than \$14.00 per hour.

The employer offered the claimant an interview at a trucking company on January 8, 2014, but the claimant said she would not be interested in working in the trucking industry even though the job would have paid \$13.00 to \$14.00 per hour. On January 23, 2014, the claimant lowered her salary expectations to \$13.00 per hour. She subsequently interviewed for the position at the trucking company but indicated afterwards that the position was too far for her to drive.

The employer advised the claimant about a receptionist position on January 27, 2014, and she was interested in it but the job was offered to someone else. The employer contacted the claimant about a data entry position on January 31, 2014, but the claimant only wanted receptionist positions. The employer called the claimant about a short-term assignment on February 27, 2014, but she was not interested in a short-term assignment. The claimant advised the employer at that point that she would be willing to take something other than a receptionist position.

The claimant filed a claim for unemployment insurance benefits effective October 13, 2013, and has received benefits after the separation from employment in the amount of \$2,360.00.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

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".

871 IAC 24.22(1) and (2) provide:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(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.

The evidence confirms the claimant is able and available to work. Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

A claimant is not qualified for unemployment compensation benefits if she refused a suitable offer of work without good cause. To be suitable, an offer of work must pay wages that are 100 percent of the claimant's average weekly wages in his highest quarter when work is offered during the first five weeks of unemployment. See Iowa Code § 96.5-3-a. Additionally, both the job offer and the job refusal must occur within the claimant's benefit year before disqualification can be imposed. 871 IAC 24.24(8).

The claimant refused to interview with the trucking company on January 8, 2014, because she did not want to work in that type of business. She later interviewed for the position after January 23, 2014, but declined the position because she believed it was too far to drive. The claimant lives in West Des Moines and the position was in north Des Moines. Inasmuch as the claimant was offered employment with wages which equaled 100 percent of her average weekly wage paid during the highest quarter of her base period, the administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, she is disqualified and benefits are denied.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

DECISION:

The unemployment insurance decision dated January 31, 2014, reference 03, is reversed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,360.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css