

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE GRAY
Claimant

APPEAL NO. 13A-UI-03234-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIM TWEEDLE
Employer

OC: 02/03/13
Claimant: Respondent (4)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 13, 2013, reference 02, decision that allowed benefits effective March 13, 2013, provided the claimant was otherwise eligible based on a conclusion work the employer offered on February 3, 2013 was not suitable. After due notice was issued, a hearing was held on April 16, 2013. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kim Tweedle represented the employer. The administrative law judge took official notice of the agency's administrative record of benefits paid to the claimant, which record indicates that no benefits have been paid to the claimant in connection with the Iowa combined wage claim.

ISSUES:

Whether the claimant refused an offer of suitable work on or about February 3, 2013.

Whether the claimant 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: Christine Gray established an Iowa combined wage claim that was effective February 3, 2013. Iowa Workforce Development calculated Ms. Gray's weekly benefit amount at \$230.00. Ms. Gray had not collected *any* benefits in connection with the claim and did not file a single week's claim for benefits.

At the time Ms. Gray established her claim, her most recent employer had been Kim Tweedle of Houston, Texas. Ms. Gray runs a home care that provides assistance to the elderly in the homes and sometimes in nursing facilities. Ms. Gray had started her employment with Kim Tweedle in September 2012 and worked as a part-time caregiver. Effective October 1, 2012, Ms. Gray was permanently assigned to provide care to a sole client for 30 to 35 hours per week, 9:30 a.m. to 5:00 p.m., Monday through Friday. Ms. Gray continued to provide care for that

same client until January 31, 2013, when the client entered a rehabilitation facility for a month of intense physical and/or occupational therapy.

During the month when the client was expected to be without need for Ms. Gray's services, Ms. Tweedle attempted to place Ms. Gray in several work assignments in or near the Houston metropolitan area. Ms. Gray's main client had lived about 30 minutes from the employer's place of business. Ms. Tweedle or her assistants always tried to call Ms. Gray at least a week in advance of when she was needed. The employer contacted Ms. Gray to work a 4:15 p.m. to 8:30 p.m. shift on February 3, but Ms. Gray declined. The client suffered from dementia. Ms. Gray would need to sit with the client. The commute to the client was 30 minutes.

On February 9, the employer offered Ms. Gray an 7:00 a.m. to 7:00 p.m. or 7:00 p.m. to 7:00 a.m. shift with a client, but Ms. Gray declined. For February 10 the employer offered the claimant a 7:00 a.m. to 7:00 p.m. shift with the same client, but Ms. Gray declined. On February 15, the employer offered Ms. Gray a 7:00 p.m. to 7:00 a.m. shift with the same client, but Ms. Gray declined. For February 16, the employer offered Ms. Gray her choice of a 7:00 a.m. to 7:00 p.m. or 7:00 p.m. to 7:00 a.m. shift with the client, but Ms. Gray declined. For February 17, the employer offered Ms. Gray a 7:00 a.m. to 7:00 p.m. shift with the client, but Ms. Gray declined. For February 23 and 24, the employer left a voice mail message for Ms. Gray offering a 7:00 a.m. to 7:00 p.m. shift. Ms. Gray did not respond.

On February 26, 2013, the employer notified Ms. Gray that she would resume service to her previous client effective March 4, 2013. On March 1, 2013, Ms. Gray told the employer she was quitting.

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 his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

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.

Iowa Administrative Code rule 871 IAC 24.24(4) states as follows:

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 If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept 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.

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".

871 IAC 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.

The weight of the evidence establishes that Ms. Gray elected not to make herself available for any work with the employer during the period of time when her regular client did not need her services. That period was February 1, 2013 through March 3, 2013. That period included the benefit week that ended February 9, 2013 through the benefit week that ended March 2, 2013. Ms. Gray did not meet the work availability requirement during that period and is not eligible for benefits for that period. The employer's account will not be charged for benefits for that period. Because no benefits have been disbursed in connection with the claim, there is no overpayment of benefits to address.

DECISION:

The Agency representative's March 13, 2013, reference 02, is modified as follows. The claimant did not meet the work availability requirement during the period of February 3, 2013 through March 2, 2013 and is not eligible for benefits that period. The employer's account will not be charged for benefits paid for that period. There is no overpayment to address.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs