

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLA J MOORE
Claimant

APPEAL NO. 11A-UI-07071-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COLFAX-MINGO COMMUNITY SCHOOL
DIS**
Employer

**OC: 04/24/11
Claimant: Respondent (1)**

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Colfax-Mingo Community School District, filed an appeal from a decision of May 17, 2011, reference 04. The decision allowed benefits to Marla Moore. After due notice was issued a hearing was held in Des Moines, Iowa on June 21, 2011. The claimant was paged in the main waiting area at 11:14 a.m. and 11:21 a.m. No one responded and the claimant did not participate. The employer participated by Board Secretary Deb Hodgson and High School Secretary Megan Hopkins.

ISSUE:

The issue is whether the claimant refused an offer of available, suitable work.

FINDINGS OF FACT:

Marla Moore had been employed as a substitute school teacher since January of 2010. The school district obtains a list of substitute school teachers for each academic year by contacting each person from the previous school year by phone. If the person contacted indicates he or she is available to be a substitute school teacher in the upcoming academic year they are placed on the available list of substitutes.

On September 9, 2010, High School Secretary Megan Hopkins contacted Ms. Moore at her phone number of record. Ms. Hopkins believes it was a cell phone but is not certain. The secretary left a message asking Ms. Moore if she was interested in being on the roster of available substitute teachers for the 2010-2011 school year and giving a phone number the claimant must call back if she was interested. The employer never received a return call from Ms. Moore.

REASONING AND CONCLUSIONS OF LAW:

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. 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:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

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, 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.

The claimant was not contacted with an offer of a specific job or by personal contact. She was only being contacted to find out if she would be available to be contacted later on for specific substitute assignments. In addition, there was no personal contact but merely a voicemail message which may or may not actually have been received by the claimant. This is not a bona fide offer of work and claimant's failure to respond to the employer's inquiry is not considered a disqualifying issue.

DECISION:

The representative's decision of May 17, 2011, reference 04, is affirmed. Marla Moore is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs