IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER L HELMICH-MANN
Claimant

SERVPRO OF ESTERVILLE
Employer

APPEAL NO: 13A-UI-11107-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/01/13
Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Jennifer L. Helmich-Mann (claimant) appealed a representative's September 24, 2013 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with an offer of work from ServPro of Estherville (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-11106-DT. The claimant participated in the hearing. Randy Colsrud appeared on the employer's behalf and presented testimony from one other witness, Susie Bradley. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 2008. She worked full time as a crew person. Her normal or base schedule was to work from 8:00 a.m. to 5:00 p.m., Monday through Friday, but she could be required to work additional time as necessary. Her last day of work was August 30, 2013. The employer discharged her on September 3, 2013. The reason asserted for the discharge was refusing to go to a work site and picking and choosing her own hours.

On Friday, August 30 the claimant had worked on two jobs in the morning. At about 8:30 a.m. she received a call from her 11-year-old daughter's school indicating that the daughter needed to be picked up because she had just started her first menses. The claimant could not leave at that time, but arranged for her mother to pick up her daughter. However, she sent a message to the office indicating that she needed to leave at noon; she felt she needed to do so because her daughter was upset and wanted her mother.

At about 12:30 p.m. the claimant came into the office, intending on then leaving for the day. Bradley, the office manager, told the claimant that she was needed to go to Sibley, about a 45-minute drive away, to inspect a new claim. The claimant declined, indicating that she needed to go home, and she left.

On Saturday, August 31, Colsrud, the owner/manager of the business, had discussions with the claimant about what had happened Friday, as he was unhappy with her choice. When she came in for work on September 3, he discharged her.

He asserted that he had previously spoken to her about her attendance, noting that she had missed 26 days of work in 2013, and had missed comparable amounts in prior years. However, he had never given her a written warning; the claimant did not realize that her job was in jeopardy if she missed any more time away from work. Colsrud noted that the claimant had indicated on August 12 that as of August 26 she would not be available to work past 5:00 p.m. for a two month period because she was coaching her daughter's soccer team; while he was not happy about this, he had made arrangements for someone else to cover any time after 5:00 p.m. Further, he noted that the claimant had excessive text messaging on the employer's cell phone in the month of August. The claimant had routinely used the cell phone for personal texting in the past with the employer's knowledge, and made a monetary contribution to the employer during periods of high usage, without any disciplinary action or negative response from the employer. The employer asserted that the texting in August had interfered with the claimant's work productivity; the claimant denied that it had any notable effect on the productivity.

The claimant established an unemployment insurance benefit year effective September 1, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is disqualified for refusing a suitable offer of work.

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.
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> 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(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.

Here, the claimant was still employed when she was instructed to go to the other job site and declined; this was not an “offer of work” as intended by the statute and rules. The refusal to perform the specific job task is a matter for resolution as part of the analysis of the discharge, which occurred in the concurrently issued decision in 13A-UI-11106-DT. Further, the claimant also did not have an open claim at the time an offer of work was made, so any refusal would not be effective to disqualify her from benefits. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 24, 2013 decision (reference 02) is reversed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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