

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONY S SESSI
Claimant

APPEAL 16A-UI-10879-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/01/16
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 29, 2016, (reference 04) unemployment insurance decision that denied benefits based upon a refusal of work. The parties were properly notified about the hearing. A telephone hearing was held on October 20, 2016. Claimant participated personally and through interpreter Miriam (10687) with CTS Language Link. Employer participated through senior talent account manager Misty Rawlins.

ISSUES:

Is the claimant able to work and available for work effective September 7, 2016?
Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant via telephone on September 7, 2016, to work at LeanCor in North Liberty, Iowa, performing work that requires driving. The wage offered for the job is \$10.75 per hour, which is comparable to the prevailing rate of pay for similar work in the area. Claimant's average weekly wage is \$404.04. The offer was made in the seventh week of unemployment.

Claimant declined the offer of work due to the fact that he cannot drive because of physical limitations. Claimant has back problems as he was involved in five vehicular accidents within a ten-year period of time. Claimant also stated he would be out of state during the month of October. However, claimant ultimately did not leave the state during the month of October and is able to and available to perform work that does not require driving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer was suitable and claimant had a good cause reason for failing to accept it.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was suitable. Iowa Code § 96.5(3)a(1) provides:

a. (1) 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:

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

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

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

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

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

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

If the offer was suitable, the claimant has the burden to establish the offer was refused for “good cause.” “Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious.” *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

Here, the employer offered claimant an assignment at LeanCor in North Liberty, Iowa for \$10.75 per hour. The assignment required the ability to drive. The employer denies the work assignment required driving. No firsthand witness testified for employer during the hearing. Claimant was present for the conversation. Therefore, I find the claimant's testimony more credible. Even so, employer made claimant an objectively suitable offer of work based on the wage offered, location, and type of work.

Here, claimant refused the offer of work for a good cause reason. Claimant is unable to perform work as a driver due to back problems he experiences due to a number of automobile accidents. However, claimant is able to and available for work as he can perform warehouse or similar types of work that do not involve driving and ultimately did not leave the state of Iowa during the month of October.

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".

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

In summary, the employer made claimant a suitable offer of work. Claimant declined the offer of work for a good cause reason. Claimant is able to and available for work.

DECISION:

The September 29, 2016, (reference 04) decision is reversed. The offer of work was suitable. Claimant declined the offer of work for a good cause reason. Claimant is able to and available for work. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending October 1, 2016, shall be paid to claimant.

Christine A. Louis
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Decision Dated and Mailed

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