

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANICE K PASYK**  
Claimant

**APPEAL NO. 09A-UI-05809-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAX MORGAN MOTOR FREIGHT LLC**  
Employer

**OC: 03/01/09**  
**Claimant: Respondent (4)**

Section 96.5(3)(A) – Refusal of Suitable Work  
871 IAC 24.24(14) – Employment Offer From Former Employer

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 10, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on May 5, 2009. Claimant Janice Pasyk participated. Clint Feuerbach, owner, represented the employer and presented additional testimony through Chris Bishop, Operations Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The matter was consolidated with the hearing in Appeal Number 09A-UI-05499-JTT.

**ISSUE:**

Whether Ms. Pasyk refused an offer of suitable work from the former employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Janice Pasyk began working for the employer as an over-the-road truck driver on January 2, 2009 and last performed work for the employer on February 21, 2009. Ms. Pasyk resides in Ohio. When Ms. Pasyk was hired, she was hired as part of a driving team. The other member of the driving team was Vince Mathers. Ms. Pasyk and Mr. Mathers were friends prior to the employment and have worked as a driving team for other employers. Ms. Pasyk and Mr. Mathers split the 42 cents-per-mile pay and drove 3,000 to 4,000 miles per week on average.

On February 21, 2009, Clint Feuerbach, owner, discharged Mr. Mathers from the employment based on abusive conduct that Mr. Mathers directed at other employees, including Ms. Pasyk. On the final return trip in the employer's truck, Ms. Pasyk contacted the employer and said she was in fear for her life, that she did not know what to do, that Mr. Mathers was threatening to take the truck to Ohio.

At the time the employer notified Mr. Pasyk of his discharge, Chris Bishop, Operations Manager, offered Ms. Pasyk continued employment as a solo driver. Ms. Pasyk's pay would increase to 35 cents per mile and she would operate the employer's truck from 2,300 to 3,000 miles per week. These conditions were the same conditions under which the employer employed other

solo drivers. Ms. Pasyk's gross pay would increase. Ms. Pasyk would operate the same truck she and Mr. Mathers had operated as a team. The truck was available. Ms. Pasyk said she would think about it.

On February 23, Mr. Mathers and Ms. Pasyk appeared at the employer's office for the purpose of collecting their pay for services performed. The pair met briefly with Mr. Feuerbach and then departed. Ms. Pasyk never provided the employer with a response to the continued offer of employment. Ms. Pasyk left with Mr. Mathers and never returned. Ms. Pasyk returned to Ohio.

The parties met with a Workforce Development representative by telephone on March 27, 2009 for a fact-finding interview. During the fact-finding interview, the employer restated its offer of continued employment with all appropriate details. Ms. Pasyk declined the offer.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-3-b 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.

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 for refusing 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.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

- (14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

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 weight of the evidence indicates that Ms. Pasyk refused an offer of suitable employment on February 21-23, 2009 by failing to respond to the employer's offer of suitable employment at or about the time she separated from the employer. However, because this refusal occurred prior to Ms. Pasyk's claim for benefits it need not be further considered as a refusal. See 871 IAC 24.24(8). Ms. Pasyk's disqualifying quit from the employment has been addressed in Appeal Number 09A-UI-05499-JTT and need not be further addressed here.

The weight of the evidence indicates that Ms. Pasyk refused an offer of employment from the former employer on March 27, 2009 at the time of the fact-finding interview. The employer had provided all appropriate information concerning the offered employment. The employment was reasonably suitable and comparable to the work Ms. Pasyk had previously performed for the employer. The employment was within Ms. Pasyk's usual occupation. The employment was not being made available as part of a labor dispute and would not have required Ms. Pasyk to join or refrain from joining a labor group.

Because Ms. Pasyk refused the offer of suitable employment on March 27, 2009, the employer's account will not be charged for benefits paid to Ms. Pasyk.

Because Ms. Pasyk returned to Ohio prior to the March 27, 2009 refusal of suitable employment, the March 27 refusal would not disqualify her for benefits. See 871 IAC 24.24(13)(A claimant who moves to another state shall not be subject to disqualification for refusal to return to a previously held job.). Ms. Pasyk would be eligible for benefits, provided she met all other eligibility requirements.

**DECISION:**

The Agency representative's decision dated April 10, 2009, reference 02, is modified as follows. The claimant refused an offer of suitable employment from the former employer on March 27, 2009. The employer's account shall not be charged for benefits paid to the claimant. The March 27, 2009 refusal would not disqualify the claimant for benefits, because she had moved to another state prior to the refusal. The claimant would be eligible for benefits, provided she meets all other eligibility requirements. See Appeal Number 09A-UI-05499-JTT regarding a disqualification for benefits based on a voluntary quit without good cause attributable to the employer.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs