

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRISTIN STANSBURY
Claimant

APPEAL 17A-UI-07054-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRECIOUS MOMENTS MONTESSORI
PRESCHOOL**
Employer

**OC: 05/28/17
Claimant: Respondent (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the July 5, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 28, 2017. The claimant participated and testified. The employer participated through Diana Pagan. Employer's Exhibits 1 through 6 were received into evidence. Official notice was taken of claimant's wage record.

ISSUE:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and 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, with a start date of May 30, 2017, to claimant via email on May 2, 2017 and again on May 3, 2017 via text message. A third offer of work was made to claimant on July 10, 2017. The wage offered for the job was \$16.50 per hour. This is higher than claimant's rate of pay at her previous position, which was similar in nature. The offer allowed claimant to work either full-time or part-time hours, whichever she preferred, and for her to choose the position she wanted to fill. Claimant's average weekly wage is \$470.92. The offer was made in the seventh week of unemployment. Claimant has not accepted this offer, as she is in ongoing negotiations with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accept a suitable offer of work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (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.

Iowa Admin. Code r. 871-24.24(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.

The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work from May 2 or 3 since the offer of employment took place outside of the benefit year. The fact that the offer was to start work on May 30, 2017, does not change the fact that the offer was nevertheless made outside of the benefit year, which began on May 28, 2017. Benefits are allowed for the week beginning May 28, 2017, through the week ending July 8, 2017.

On July 10, 2017 a third offer of employment was made. Claimant has not yet accepted that offer, as she and the employer are continuing to negotiate terms. The offer would have allowed claimant to work 40 hours per week at \$16.50 per hour in the position of her choice. Benefits are denied beginning July 9, 2017, as the offer was suitable and the fact that negotiations are ongoing is not a good cause reason for the failure to accept it.

DECISION:

The July 5, 2017, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant failed to accept offers of work made on May 2 and 3, which are outside of her benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of these offers. Claimant subsequently failed to accept a suitable offer of work made on July 10, 2017. Benefits are allowed for the six-week period beginning May 28, 2017 and ending July 8, 2017, provided claimant is otherwise eligible. Benefits are denied beginning the week of July 9, 2017 and are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND:

The issue of whether claimant has been overpaid benefits as a result of this decision is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs