

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA L SLY
Claimant

APPEAL NO. 15A-UI-04472-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA LLC
Employer

OC: 02/15/15
Claimant: Respondent (1)

Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 7, 2015, reference 03, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the employer had not actually offered work on March 13, 2015. After due notice was issued, a hearing was held on May 19, 2015. Claimant Brenda Sly did not participate. Victoria Benson represented the employer. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

After the hearing record had closed and the employer had been dismissed from the hearing, the claimant contacted the Appeals Section at 11:08 a.m. regarding the 10:00 a.m. hearing. The claimant had received proper and timely notice of the hearing, but had not followed the hearing notice instructions to provide a telephone number for the hearing. The claimant did not provide good cause to reopen the hearing record. See Iowa Admin. Code r. 871-26.14(7)(c) (Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record).

ISSUE:

Whether the claimant refused an offer of suitable work on or about March 13, 2015 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Flagger Pros USA, L.L.C., as a part-time, seasonal flagger from August 2014 and last performed work for the employer on February 4, 2015. At that point, the employer laid the claimant off. The claimant established a claim for benefits that was effective February 15, 2015 and received \$1,065.00 in benefits for the five-week period of February 15, 2015 through March 21, 2015. The claimant's weekly benefit amount was \$213.00. This employer is one of the claimant's base period employers. On March 13, 2015, the employer called the claimant and left a voice mail message for the claimant indicating that the employer had work available for the claimant in Greenfield. The claimant had previously performed work

for the employer in Greenfield and the work was the same work the claimant had previously performed for the employer. Also on March 13, the employer called the claimant's number and spoke to an unidentified person who indicated that the claimant was out in Missouri. The employer knew that the claimant had relatives in Missouri.

On March 18, 2015, the employer again telephoned the claimant's number. A family member of the claimant answered the phone. That person told the employer that they would tell the claimant that the employer was trying to reach the claimant. The claimant did not return the employer's call. At that point, the position in Greenfield was still available.

On March 23, 2015, the employer again telephoned the claimant at her number. The claimant did not answer. The employer left a message asking whether the claimant was coming back to the employment and indicating that the employer was about to deactivate the claimant in the employer's roster. At that point, the position in Greenfield had been filled and the employer was not contacting the claimant about a particular position.

The employer was unable to establish contact with the claimant until the April 6, 2015 fact-finding interview. At the fact-finding interview, the claimant stated that she had not responded to the employer's attempts to contact her because she had accepted other, better employment that she started on March 23, 2015. The employer believed that statement. Workforce Development records do not reflect any wages from another employer being reported to the Agency as wages paid to the claimant during the first quarter of 2015. However, if the claimant began the new employment on March 23, 2015, the claimant might not have received her first paycheck until April, which would place the payment in the second quarter of 2015.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times her weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Admin. Code r. 871-24.24(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 § 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.

Iowa Code § 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.

Iowa Administrative Code rule 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 ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... 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 the employer never made personal contact with the claimant and the claimant never made a definite refusal of the work. When the employer was unsuccessful in making personal contact with the claimant by telephone, the employer had the option of sending a certified letter to the claimant to offer the proposed work assignment and to meet the personal contact requirement. The employer did not exercise that option. Because there was no bonafide offer and no definite refusal, there is insufficient basis for disqualification for benefits based on a work refusal. Even if there had been a bonafide offer and a definite refusal during the period of March 13-23, 2015, the claimant's acceptance of new employment to start on March 23, 2015 would have constituted good cause to refuse the offer of employment. See Iowa Admin. Code rule 871-24.24(7).

DECISION:

The April 7, 2015, reference 03, decision is affirmed. There was not bonafide offer and no definite refusal in connection with the employer's attempt to contact the claimant on March 13, 18 and 23, 2015 and no definite work refusal. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs