

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIKA L SCHWARTING
Claimant

APPEAL 21A-UI-13601-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUNG MENS CHRISTIAN ASSN
Employer

OC: 03/15/20
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Admin. Code r. 871-24.24(1)a – Work Refusal – Offer

STATEMENT OF THE CASE:

Young Mens Christian Assn, the employer/appellant, filed an appeal from the June 7, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2021. The employer participated through Tami Ruppel, human resources and payroll administrator and Laurel Fredenburg, association membership director. Ms. Schwarting participated and testified. The administrative law judge took official notice of the administrative record.

ISSUE:

Was a suitable offer of work made to Ms. Schwarting?
If so, did she fail to accept it and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Schwarting began working for the employer on November 21, 2016. She worked as a full-time membership and program administrator. She and the employer agreed that she could work flexible hours, she could bring her children to work and care for them in her office as she worked, and she could bring her children to the employer's on-site daycare center for up to three hours per day. Ms. Schwarting usually worked Monday through Friday.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic, the employer furloughed Ms. Schwarting on March 17, 2020. On, or about, May 28, 2021, the employer asked Ms. Schwarting to return to work as of May 31, 2020 at her same pay and same position. Ms. Schwarting accepted the offer. After she had accepted the offer, Ms. Schwarting's supervisor and her supervisor's supervisor gave her more information about the employer's offer for her to return to work. The employer told Ms. Schwarting that she would have set hours, including hours on Saturdays and she would no longer be allowed to bring her children to the office. In addition, Ms. Schwarting would have more work responsibilities. Based on the new information, Ms. Schwarting took back her

acceptance of the employer's offer because she could not work set hours, including on Saturdays, without being able to bring her children to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not make a suitable offer of work to Ms. Schwarting.

Iowa Code section 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".

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(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.

In this case, the employer agreed to certain conditions with Ms. Schwarting so that she could both work and provide care for her children. The employer then went back on the agreement when it asked Ms. Schwarting to return to work but without the flexibility that it had agreed to and that Ms. Schwarting needed to be able to care for her children and work. Whether the employer changed the terms of the employment contract in its offer to return to work bears a reasonable relation to determining whether the employer's offer is suitable. Based on the evidence, in this case the employer's offer was not a suitable offer. Ms. Schwarting was not required to accept an unsuitable offer of work, and she did not. Since the employer's offer of work was not suitable, benefits are allowed.

DECISION:

The June 7, 2021, (reference 01) unemployment insurance decision is affirmed. The employer did not make a suitable offer of work to Ms. Schwarting. Benefits are allowed.



Daniel Zeno
Administrative Law Judge
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August 16, 2021
Decision Dated and Mailed

dz/lj