

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE E COMRIED
Claimant

APPEAL NO. 100-UI-04727-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOSHUA PARISE & ASSOCIATES INC
Employer

OC: 10/11/09
Claimant: Respondent (1)

Section 96.5-3-a – Offer of Suitable Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an untimely appeal from a representative's decision dated December 7, 2009, reference 03, which allowed benefits finding that the claimant did not refuse an offer of suitable work on October 11, 2009. A telephone hearing was scheduled for February 15, 2010 and notice of the hearing was sent to the parties' addresses of record. Based upon the employer appellant's failure to participate in the hearing, an administrative law judge decision was issued on February 19, 2010 affirming the representative's decision. The employer filed an appeal with the Employment Appeal Board. The matter was remanded for a new hearing by Appeal Board decision dated March 26, 2010. A telephone conference hearing was scheduled for and held on May 12, 2010 at which time the claimant participated personally. The employer participated by Mr. Joshua Parise, Company President.

ISSUE:

At issue is whether the claimant refused a bona fide offer of suitable work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Annette Comried was employed by Joshua Parise & Associates Inc. for approximately one year before her employment came to end on October 16, 2009 when Mr. Parise closed his insurance offices located in Cedar Rapids, Iowa. Ms. Comried had worked as a full-time office manager and had been paid by the hour. In mid September 2009 Mr. Parise informed the claimant of his plans to close the office in Cedar Rapids and to move the business to a new location in Coralville or Iowa City, Iowa. Mr. Parise made statements at that time about employing a part-time assistant and made additional statements such as, "It's been a pleasure to work with you, I'm sorry to lose you." The claimant, who enjoyed her work, believed that Mr. Parise was informing her that her employment would be coming to an end and did not consider the statements be an offer of employment in the new location. The claimant, who resides north of Cedar Rapids, was in the process of building a new home and would have considered traveling to the new job location.

Ms. Comried continued to perform her normal services for the company until its closing. In addition, to her regular duties, Ms. Comried assisted in packing for the move until October 16, 2009 when the office closed. The parties left under amicable terms exchanging pleasantries. Neither Ms. Comried nor Mr. Parise made any further references about employment at the new business location. Ms. Comried opened her claim for benefits that week. The effective date of her claim was backdated to November 11, 2009.

The employer's initial appeal in this matter was delayed because a change of address that the company had initiated previously was not implemented.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not refuse a suitable offer of work.

Iowa Code section 96.5-3-a 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.

a. 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:

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

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

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

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

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

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.

871 IAC 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.

Based upon the evidence in the record, the administrative law judge finds that the claimant was not made a bona fide offer of work. Having considered the testimony of the witnesses and the responses to numerous questions, the administrative law judge concludes that in mid September, 2009 Mr. Parise made statements praising Ms. Comried's work abilities and her value to the company when he was informing her that the company would be moving in the future, Mr. Parise did not clearly articulate a bona fide offer of work for the claimant at the new business location. No specific details about the position were exchanged and there was no clear offer communicated to the claimant.

The job position that Mr. Parise was considering for the claimant may have been suitable, if the parties had discussed the job opening, its responsibilities, pay and any other factors that may have varied from the job from its old business location to the new. The approximate 65 mile per day travel required to the new location clearly would have been one of the factors that the parties would have to had discussed and agreed upon. There was no exchange of information on any of these matters.

Both parties agree that the only conversation regarding the claimant's employment and the future move took place in mid September 2009. Ms. Comried did not open her claim for unemployment insurance benefits until approximately one month later, after the location in Cedar Rapids had closed. After the closing the claimant filed a claim for unemployment benefits. Because the potential offer did not take place after a claim for benefits had been filed, the administrative law judge thus does not have jurisdiction to evaluate the potential offer, whether it occurred or whether the refusal was with good cause as they occurred outside the claimant's benefit year. Benefits are therefore, allowed providing the claimant is otherwise eligible.

DECISION:

The December 7, 2009, reference 03, decision is affirmed. The claimant did not refuse a suitable offer of work in her benefit year. The administrative law judge therefore has no jurisdiction to determine the suitability of the offer. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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