

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER J SULLIVAN
Claimant

APPEAL NO. 11A-UI-04675-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RMG DIRECT INC
Employer

OC: 01/23/11
Claimant: Appellant (2-R)

Section 96.5-3-a – Refusal of Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 4, 2011, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 4, 2011. Claimant participated. Employer participated by Dominic Colella, Vice-President.

ISSUE:

The issue in this matter is whether claimant refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on or about February 25, 2011 at the Manchester, Iowa location when she was laid off due to a permanent closing of that location. Before the permanent closing she was offered the opportunity to go to other locations of the employer. The employment was at minimum wage and full days of work were not guaranteed. The other locations were too great a distance from the claimant's work area and residence, and would have created substantial personal hardship.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Claimant was laid off due to a business closing. She was offered work different which she refused before the layoff. The work was not suitable as it was too great a distance from the

claimant's residence and geographical work area to be considered suitable. Particularly so for the minimum wage employment offered.

DECISION:

The decision of the representative dated April 4, 2011, reference 03, is reversed and remanded. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. The issue of business closing benefits from a layoff due to a business location closing is remanded to claims for a determination.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/pjs