

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOTTIE VANDERHYDE

Claimant

APPEAL NO. 13A-UI-09485-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT-B

Employer

OC: 07/28/13

Claimant: Respondent (1)

Section 96.5-3-a – Suitable Work

871 IAC 24.24(8) – Work Refusal/Disqualification Jurisdiction

STATEMENT OF THE CASE:

City of Des Moines Payroll Department-B filed a timely appeal from a representative's decision dated August 9, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant did not accept an offer of work with the City of Des Moines Payroll but at the time the claimant did not have a valid unemployment insurance claim and therefore was not subject to a benefit disqualification. After due notice was provided, a telephone hearing was held September 23, 2013. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Carol Moser, Assistant City Attorney and witness, Mr. Tim Smith, Park and Recreation Supervisor. Employer Exhibits A, B, C and D were received into evidence.

ISSUE:

The issue is whether the claimant refused an offer of suitable work during a time that she had a valid unemployment insurance claim.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Dottie Vanderhyde began employment with the City of Des Moines as a park and recreation department associate worker on May 25, 2012. Park and recreation department associate employees have 40 hours of work per week May through August, thereafter the workers' hours are reduced dependent upon the City of Des Moines needs. Workers are informed that they may be recalled to employment on short notice and that if called the City expects the workers to return the call within a reasonable period of time. Repeated failures to respond to recalls might result in a separation from employment.

Ms. Vanderhyde was last scheduled to work on August 19, 2012 and completed her duties that day.

After the claimant completed her work on August 19, 2012, the City of Des Moines temporarily did not have any additional assignments for her. On or near that date the claimant's supervisor, Tim Smith, however, attempted to telephone the claimant to recall her to work with the City performing the same or similar jobs at the same or similar pay and hours. Mr. Smith did not make direct contact with Ms. Vanderhyde and therefore left a message for the claimant to re-contact the City. Ms. Vanderhyde did not do so.

It is the City of Des Moines' position that the work offered to the claimant was suitable and the claimant refused without good cause an offer of suitable work and that the employer should not be charged for additional benefits paid to the claimant after that date.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether an offer of suitable work was made to the claimant during the time when the claimant had a valid claim for unemployment insurance benefits. It does not.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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.

Inasmuch as the evidence in the record establishes that the City of Des Moines made an offer of work to the claimant at the time that she did not have a valid claim for unemployment insurance benefits, Ms. Vanderhyde did not have a valid claim for benefits until the year 2013. Therefore benefit disqualification is not accessible against the claimant at the time of the job offer for refusing what otherwise may have been suitable work.

The claimant also establishes, however, that a bona fide offer of work was not made to the claimant by personal contact or registered letter as required by section 871 IAC 24.24(1)a.

For the above-stated reasons, the administrative law judge concludes that the adjudicator's decision dated August 9, 2013, reference 01, is correct and the claimant is not subject to a benefit disqualification and the employer is not relieved of charging.

DECISION:

The representative's decision dated August 9, 2013, reference 01, is affirmed. Offer of work was not made during a time when the claimant had a valid unemployment insurance claim. The claimant is not subject to a benefit disqualification.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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