

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L BOGER
Claimant

APPEAL NO. 12A-UI-07855-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN HEALTH SERVICES INC
Employer

OC: 05/27/12
Claimant: Respondent (4)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated June 19, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 23, 2012. The claimant participated. The employer participated by Tina Moeller, president, and Tracy Meyer, business manager. The record consists of the testimony of Tracy Meyer; the testimony of Tina Moeller; and the testimony of Michelle Boger.

ISSUE:

Whether the claimant refused to accept suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care pharmacy located in Denver, Iowa. The claimant was hired on January 24, 2011, as a pharmacy tech trainee. She was a full-time employee. Her last day of actual work was May 21, 2012. She was officially terminated on May 31, 2012. The claimant was terminated because she could not pass the test needed to be certified as a pharmacy technician.

The claimant was offered a job as a driver on or about May 20, 2012. The claimant first said she would think about the offer and then she turned it down. She established her claim for unemployment insurance benefits on May 27, 2012. The claimant was offered the same driving job on or about June 27, 2012. The job was for the same number of hours and at the same hourly rate. The claimant again turned the job down. She had a new job starting July 9, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5-3-a disqualifies an individual for benefits if the individual has refused a suitable offer of work. The agency's jurisdiction to disqualify an individual for benefits under these circumstances does not begin until the individual has filed a claim for unemployment insurance benefits. See 871 IAC 24.24(8). Offers and refusals made prior to an individual requesting unemployment insurance benefits cannot be the basis for disqualification. The employer's first offer in this case was made on or about May 20, 2012. The claimant did not establish her claim for benefits until May 27, 2012. While the claimant did refuse this offer, she did so BEFORE her claim was established. She is not disqualified for refusing the first offer.

The second offer was made or on about June 27, 2012. The claimant testified that she refused this offer. The offer was for the same number of hours and the same hourly rate. This second offer and this second refusal do disqualify the claimant effective June 27, 2012. However, as of July 9, 2012, the claimant was no longer able and available for work as she started a new job and is presently employed.

DECISION:

The representative's decision dated June 19, 2012, reference 01, is modified in favor of the appellant. The claimant is disqualified as of June 27, 2012, for refusing an offer of suitable work. The claimant is disqualified as of July 9, 2012, for not being able and available for work.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw