

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENIFER L ROE
Claimant

APPEAL NO: 13A-UI-08626-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPHA 1 ART GLASS INC
Employer

OC: 07/07/13

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Alpha 1 Art Glass, Inc. (employer) appealed a representative's July 18, 2013 decision (reference 01) that concluded Jenifer L. Roe (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2013. The claimant participated in the hearing. Joleen Tedrow appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of recall to suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer in late May 2011. She worked full time as a general laborer, but was occasionally laid off for lack of work. Her last day of work was March 25, 2013. She was again laid off for lack of work at that time.

On May 2 Tedrow, the employer's glass studio manager, called the claimant and told her she should report back to work on May 6. The claimant indicated that she did have a job interview for another position, but that she would let Tedrow know. On May 3 she came into the shop and inquired what she would be doing on May 6; Tedrow indicated that she was not sure. The claimant then indicated that she did have a second job interview and would let Tedrow know.

On May 5 the claimant sent Tedrow a text message indicating that she had a school paper to work on and so would not be in on May 6; she further indicated to Tedrow that Tedrow should let her know when she was needed next. Tedrow took this as a refusal to return to work. The employer then proceeded to begin the process to hire someone else.

The claimant did not establish a claim for unemployment insurance benefits until July 7, 2013. She sought and was granted Department Approved Training (DAT) status effective July 14, 2013 through a representative's decision issued on July 26, 2013 (reference 03).

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The separation between the claimant and the employer was the layoff on March 25, 2013 by the employer due to the lack of work. The subsequent failure of the claimant to return to work does not create a new separation, but raises the question as to whether the claimant refused a suitable offer of recall to work.

The issue in this case is therefore whether the claimant refused a suitable offer of recall to work without good cause.

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 that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work or recall to the claimant by personal contact and a definite refusal was made by the claimant. Further, 871 IAC 24.24(8) provides that in order for there to be a disqualification, both the offer of work and the claimant's responding refusal must occur within the claimant's benefit year,

In this case, while there was a bona fide offer of recall to work, there was no truly definite refusal. Further, even if the claimant would be deemed to have refused the recall, the claimant did not have an open claim at the time an offer of work was made, so any refusal would not be effective to disqualify her from benefits. Benefits are allowed, if the claimant is otherwise eligible.

Some question is raised as to whether the claimant's failure to return to work was related to not being able and available for work.

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 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

871 IAC 24.39 provides:

Department-approved training or retraining program. The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

The claimant has been granted department approved training. She is therefore exempt from the requirements to be able and available for work. However, the employer is not subject to charge for benefits paid to the claimant while she remains in that status.

DECISION:

The representative's July 18, 2013 decision (reference 01) is affirmed. The claimant is not disqualified for refusing a suitable offer of recall to work without good cause. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The claimant is exempt from the requirement that she able to work and available for work effective July 14, 2013 because of the granting of department approved training status. The employer is not subject to charge while she remains in that status.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs