

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANESSA D HUNTER
Claimant

APPEAL NO. 14A-UI-01932-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
Employer

OC: 01/26/14
Claimant: Respondent (5)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 7, 2014, reference 01, that concluded the claimant was laid off due to lack of work. A telephone hearing was held on March 14, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Vokoun participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing. The parties agreed that the issue of whether the claimant declined suitable work could be addressed in the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's average weekly wage rate was \$629.95. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the employer file a timely appeal?

Did the claimant fail to accept an offer of suitable work without good cause?

Is the claimant available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant's last work assignment was a full-time, long-term assignment as a loan servicing specialist at Wells Fargo from January 22, 2013, to January 30, 2014. She completed the work assignment and immediately asked for another assignment, but no assignment was available. She was laid off at that point.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 26, 2014. Her average weekly wage based on her high quarter wages was \$629.95.

On February 17, 2014, the employer offered the claimant a full-time temporary job as a processing associate at Marsh Company. The job paid \$12 per hour for 40 hours of work per week and was to last 30 days. The claimant declined the job because she was hoping to find a permanent or long-term job. No personal or written offers of work have been made by the employer since February 17.

An unemployment insurance decision was mailed to the employer's last-known address of record on February 7, 2014. The decision concluded she was laid off and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 17, 2014.

The employer received the decision within the ten-day period for appealing the decision. It faxed its written appeal on February 20, 2014, which is after the time period for appealing had expired. The reason for the delay in filing the appeal is not known. The reason given for the appeal was listed as the claimant was back working for the employer, which was not true.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely appeal from the February 7, 2014, decision. The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

The employer filed the appeal after the ten-day deadline. It had a reasonable opportunity to file a timely appeal and the delay in appealing was not due to Agency error or an error or delay by the United States Postal Service, which would excuse the late filing of the appeal. See Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973); 871 IAC 24.35(2). The appeal was untimely. The decision that the claimant was laid off is final. I will note that the person representing the employer at the hearing was not really sure why the appeal was filed, and the letter of appeal was not accurate since it said the claimant had returned to work for the employer.

The evidence at the hearing disclosed the claimant had declined work on February 17, 2014. The parties agreed that this issue could be resolved rather than remanding this case for a new fact-finding interview on the issue.

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The claimant's weekly wage based on her high quarter earnings was \$629.95. The average weekly wage for the job offered with Marsh Company was \$480. Since it was offered within the first five weeks the claimant was unemployed, it would not be considered suitable under Iowa Code § 96.5-3-a. The claimant is not subject to disqualification.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. There is no evidence that the claimant has not been able to, available for, or actively looking for work since filing for unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated February 7, 2014, reference 01, is modified with no change in the outcome. The employer's appeal of the decision that the claimant was laid off was untimely. The claimant is not subject to a disqualification for declining the work offered on February 17, 2014. She is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs