

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTORIA L ALLENDORF**  
Claimant

**APPEAL NO. 10A-UI-07611-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TDG INC**  
**DIETER & ASSOCIATES**  
Employer

**OC: 07/05/09**  
**Claimant: Respondent (1)**

Section 96.5(3) – Work Refusal  
Section 96.4(3) – Able & Available  
Section 96.7(2)(b) – Successor Employer Liability

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 20, 2010, reference 03, decision that allowed benefits based on an Agency conclusion that the claimant did not have a valid unemployment insurance claim at the time she allegedly refused an offer of work with TDG, Inc., on June 1, 2009. After due notice was issued, a hearing was held on July 13, 2010. Claimant participated. Attorney Emilie Roth Richardson represented the employer and presented testimony through Tim Dieter and Marie Wiewel. The administrative law judge took official notice of the decision entered in Appeal Number 10A-UI-05574-NT, concerning the claimant and Marie J. Wiewel, doing business as Allstate Insurance Company. The administrative law judge took official notice of the Notice of Employer Status and Liability entered on November 6, 2009, which found TDG, Inc./Dieter & Associates to be a successor employer. The administrative law judge took official notice of e-mail correspondence between Mr. Dieter and Lisa Kolontar of the Workforce Development Tax Bureau.

**ISSUES:**

Whether Ms. Allendorf is disqualified for unemployment insurance benefits based on a refusal of suitable work.

Whether Ms. Allendorf has been able to work and available for work since establishing her claim for benefits.

Whether the TDG, Inc./Dieter & Associates' employer account may be assessed for benefits paid to Ms. Allendorf.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Victoria Allendorf was employed by Marie J. Wiewel, doing business as Allstate Insurance Company, as a full-time agent/customer service representative until July 1, 2009, when she was laid off due to

a business closing. In May or June 2009, Ms. Wiewel executed a Letter of Intent with Tim Dieter, doing business as Dieter & Associates (employer account number 369841), concerning proposed sale of her business to Mr. Dieter. The sale was effective October 1, 2009. Mr. Dieter purchased the entire business, which consisted of the book of business and client list. Mr. Dieter commenced operating the business at a different location than where Ms. Allendorf had performed her duties. On November 6, 2009, Workforce Development determined that Tim Dieter, doing business as Dieter & Associates (employer account number 369841) was a successor business for unemployment insurance experience and liability purposes. Mr. Dieter did not appeal that decision.

Ms. Allendorf established a claim for unemployment insurance benefits that was effective June 21, 2009. The claim was soon thereafter cancelled. Ms. Allendorf established a second original claim for unemployment insurance benefits that was effective July 5, 2009 and has received benefits under that claim. At the beginning of June 2009, Mr. Dieter spoke to Ms. Allendorf about whether she would be interested in joining his company. The details of the proposal were never solidified, because Ms. Allendorf advised she intended to pursue her real estate career. Ms. Allendorf understood Mr. Dieter to be interested only in offering her an entirely commission-based position and Ms. Allendorf was not interested in pursuing commission-only employment. Ms. Allendorf has pursued her real estate career while she searched for other full-time employment. Ms. Allendorf has had a very small number of clients and the real estate venture has not taken a significant amount of her time or interfered with her search for new full-time employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant who refuses an offer of suitable work without good cause is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See Iowa Code section 96.5(3).

In deciding whether or not a claimant failed to accept suitable work, it must first be established that a bona fide offer of work was made. See 871 IAC 24.24(1)(a).

Both the offer of work and the claimant's accompanying refusal must occur within the individual's benefit year before the Iowa Code subsection 96.5(3) disqualification can be imposed. In other words, the claimant must have filed for benefits and have an active claim. See 871 IAC 24.24(8).

The weight of the evidence fails to establish a bona fide offer of employment. Rather, the evidence indicates a preliminary discussion that never reached an offer of employment. The parties discontinued the discussion, before there was an offer of employment, after Ms. Allendorf concluded Mr. Dieter was interested only in offering a commission-only position and after Ms. Allendorf indicated she planned to pursue her real estate career.

The weight of the evidence also indicates that the entire discussion between Ms. Allendorf and Mr. Dieter concerning proposed employment occurred prior to Ms. Allendorf's claim for benefits. Thus, even if there had been an offer and Ms. Allendorf had refused the offer, the refusal would not disqualify her for unemployment insurance benefits.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

When a claimant devotes such time and effort to pursuing self-employment that the claimant is not available for employment or not available to make an active and earnest search for new employment, the claimant does not meet the availability requirement if Iowa Code section 96.4(3) and is ineligible for benefits. See 871 IAC 24.23(7).

The weight of the evidence indicates that Ms. Allendorf has been involved in a limited self-employment venture since she established her claim for benefits. Ms. Allendorf's client base is very small and Ms. Allendorf's time commitment to the venture has been correspondingly small. Ms. Allendorf's self-employment venture has not prevented her from being available for full-time employment and has not prevented her from making an active and earnest search for new employment. Ms. Allendorf is eligible for benefits, provided she is otherwise eligible.

Workforce Development made a determination on November 6, 2009, that TDG, Inc., doing business as Dieter & Associates (employer account number 369841), was a successor employer to Marie J. Wiewel (employer account number 321761-9) and mailed a Notice of Employer Status and Liability to Mr. Dieter on November 6, 2009. Mr. Dieter did not appeal that determination.

Iowa Administrative Code rule 871 IAC 23.30(1) provides as follows:

Successorship—liability for contributions and payments in lieu of contributions.

23.30(1) Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

As a successor employer, TDG, Inc., doing business as Dieter & Associates (employer account number 369841), may be assessed for benefits paid to Ms. Allendorf based on base period wage credits Ms. Allendorf earned through her employment with Marie J. Wiewel, doing business as Allstate Insurance Company (employer account number 321761).

**DECISION:**

The Agency representative's May 20, 2010, reference 03, is affirmed. The claimant did not refuse an offer of suitable employment. The alleged refusal predated her claim for benefits. The claimant has been able and available for work and is eligible for benefits, provided she is otherwise eligible. The employer is a successor employer and may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw