

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAWN E PEREZ**

Claimant

**APPEAL 17A-UI-03965-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**

Employer

**OC: 01/01/17**

**Claimant: Appellant (2)**

Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 6, 2017, (reference 03) unemployment insurance decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 1, 2017. Claimant participated. Employer participated through district manager Lori Smith and senior staffing supervisor Melissa Mitchell. Official notice was taken of the administrative record, including claimant's wage history and benefit payment history, with no objection.

**ISSUES:**

Was a suitable offer of work made to the claimant? If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant via the phone on March 14, 2017. The offer included the following terms: administrative assistant (job duties: running reports, filing, pulling paperwork, entering orders, e-mail customers, and PowerPoint presentations), 8:00 a.m. to 5:00 p.m., 40 hours a week, but the hours may fluctuate (no guarantee of 40 hours per week), at Quaker in Cedar Rapids, Iowa. The wage offered for the job was \$13.00 per hour. If claimant worked 40 hours a week at this assignment, the weekly wage would have been \$520.00. The position was an entry level position and some training would be provided by the assignment. Claimant indicated to the employer that she needed a guarantee of 40 hours per week and cannot work past 4:30 p.m. and wanted to start earlier. On March 15, 2017, after Ms. Mitchell communicated with Quaker, she contacted claimant and informed her that the assignment would adjust the schedule to 8:00 a.m. to 4:30 p.m. Claimant rejected the offer and told Ms. Mitchell that it had to be 7:00 a.m. to 4:00 p.m. or 4:30 p.m.

Claimant filed her initial claim with an effective date of January 1, 2017. Claimant then filed an additional claim with an effective date of March 5, 2017. Claimant's average weekly wage is \$536.54. The offer was made during the first five weeks since she filed an additional claim for benefits.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer of work was not suitable.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

Iowa Admin. Code r. 871-24.24(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 § 96.5(3) 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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

The offer the employer made to claimant on March 14, 2017 was made during the first five weeks after she filed an additional claim for benefits. Even if claimant received 40 hours per week, the offer was for a weekly wage (\$520.00) below her average weekly wage (\$536.54). Therefore, the offer was unsuitable, as it did not meet the wage requirements set out above for an offer to be considered suitable. Benefits are allowed.

**DECISION:**

The April 6, 2017, (reference 03) decision is reversed. The offer of work made to claimant was not suitable. Benefits are allowed, provided claimant is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs