

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ANGELA M STOOKEY**  
Claimant

**KFC**  
Employer

**APPEAL 16A-UI-12297-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/11/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 26, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 5, 2016. The claimant participated personally. The employer did not register a phone number with the Appeals Bureau and did not participate. Department exhibit D-1 (the claimant's appeal letter) was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The employer made an offer of work to claimant in person on October 7, 2016. That offer included the following terms: as a prep cook, day shift, 20 to 25 hours per week. The claimant was not guaranteed a set number hours per week. The claimant would be paid \$7.25 per hour. The claimant's average weekly wage is \$148.32. If the claimant performed 20 hours of work per week at the rate of pay proposed, she would earn \$145.00 in wages. The offer was made in the 4th week of unemployment. The claimant did have a valid claim for unemployment insurance benefits at the time. The claimant declined the position based on her interaction with the employer, and based on the wages offered.

The claimant began employment effective December 2, 2016 at Pizza Hut, in North Liberty, working part-time.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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. 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.

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 Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The offer of work by KFC as a prep cook in this case was made during the first five weeks of unemployment following the claimant's filing of a claim for benefits effective September 11, 2016. The rate of pay was \$7.25 per hour for approximately 20 to 25 hours per week with no guarantee of hours. The employer did not attend the hearing or offer any evidence to refute that the claimant would work more than 20 hours or receive a higher rate of pay. Therefore, the claimant is not subject to disqualification because the wages offered for the job were not equal to 100 percent of \$148.32, her average weekly wage in her highest quarter of wages in her base period.

**DECISION:**

The October 26, 2016, (reference 02) decision is reversed. The claimant did not refuse a suitable offer of work. The claimant is allowed benefits, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/pjs