

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA MADRID**  
Claimant

**APPEAL NO. 13A-UI-02893-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOWROYD WRIGHT EMPL AGENCY INC**  
Employer

**OC: 10/21/12  
Claimant: Appellant (2)**

Section 96.5-3-a – Work Refusal

**STATEMENT OF THE CASE:**

Jessica Madrid filed a timely appeal from a representative's decision dated February 27, 2013, reference 06, which denied unemployment insurance benefits finding that on January 9, 2013 the claimant refused to accept suitable work with the Howroyd Wright Employment Agency, Inc. After due notice was provided, a telephone hearing was held on April 8, 2013. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

The issue is whether the claimant had good cause for refusing an offer of suitable work.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Jessica Madrid had contacted the Howroyd Wright Employment Agency, Inc. in an effort to secure a temporary job after being separated from her previous position with Wells Fargo Bank as a loan officer. The claimant also contacted other temporary employment services and also looked for new employment on her own during this time.

On or about January 29, 2013, Ms. Madrid was informed of a potential position with the Metropolitan Insurance Company. Ms. Madrid was assured at that time by the representative of the Howroyd Wright Employment Agency, Inc. that the pay would be at least \$14.00 per hour, the minimum specified by Ms. Madrid when she made application with the temporary employment service.

Ms. Madrid was told that she must first pass computer testing before she could be considered as a viable candidate for the position. Although Ms. Madrid agreed to be tested, the representative of the Howroyd Wright Employment Agency, Inc. later stated that previously what was described as mandatory testing now would not be required. Ms. Madrid attended a

meeting with the perspective employer and was in the process of accepting the offer of employment with Metropolitan Insurance Company through the temporary service, when the representative of the service unexpectedly then stated that the hourly amount would be \$12.00.

Because the amount actually offered was substantially less than the amount specifically promised by the representative when the job offer was initially made, Ms. Madrid rejected the offer not only because it was less than promised, but also because Ms. Madrid concluded that the representative of the Howroyd Wright Employment Agency, Inc. had been intentionally untruthful about what the pay would be. The claimant also rejected the offer because she felt that the representative was attempting to intimidate the claimant into accepting the offer stating that "if you're on unemployment you cannot reject this offer." Because of the representative's untruthfulness and intimidation, Ms. Madrid chose not to work through their company for a job assignment. During this time the claimant was also entertaining other job offers and accepted an offer of employment with another company.

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

The question before the administrative law judge is whether the evidence in the record establishes that the claimant refused an offer of suitable work. It does not.

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 24.24(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.

871 IAC 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.

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.

In the case at hand the evidence in the record establishes the claimant did not accept an offer of what otherwise may have been suitable work because the claimant reasonably concluded that the representative offering the work had been intentionally untruthful about the amount per hour and because the representative had engaged in attempting to intimidate the claimant to accept

the offer that was \$2.00 per hour lower than the amount specifically represented by the temporary company initially. Ms. Madrid was unequivocal in her testimony that she had been specifically told that the new job would pay \$14.00 per hour but later the representative of the Howroyd Wright Employment Agency, Inc. unilaterally reduced the amount per hour to \$12.00 per hour without explanation. When the claimant requested to see the paperwork that had been completed at the time of application that would show that the claimant had specified \$14.00 or more per hour, the temporary employer refused to provide the documentation and attempted to intimidate the claimant by threatening to disrupt the claimant's unemployment insurance benefits if she did not accept the job at the newly stated lower rate of pay. Ms. Madrid had not previously been employed by this temporary service.

There being no evidence to the contrary, the administrative law judge concludes that the claimant has established good cause for failing to accept the offer of work based upon the temporary employment service's unilateral changing of the amount per hour and the demeanor used by the temporary service's representative.

**DECISION:**

The representative's decision dated February 27, 2013, reference 06, is reversed. Claimant did not refuse an offer of suitable work. Unemployment insurance benefits are allowed effective January 29, 2013, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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