

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ILA J DOUD
Claimant

APPEAL NO: 10A-UI-14594-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC
Employer

OC: 09/12/10

Claimant: Respondent (5/R)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Grapetree Medical Staffing, Inc. (employer) appealed a representative's October 15, 2010 decision (reference 03) that concluded Ila J. Doud (claimant) was qualified to receive unemployment insurance benefits in conjunction with a possible May 2010 offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2010. The claimant participated in the hearing. Kelly Seymour appeared on the employer's behalf and presented testimony from one witness, Tim Kinnetz. One other witness, Jeannine Kinnetz, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work without good cause? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for a prior employer on September 19, 2007 and worked for that employer sporadically through September 29, 2009. The claimant had worked as a nurse through the prior employer's temporary medical staffing agency. The employer purchased that employer's business effective November 2009, and became the successor to the prior employer's business history and unemployment insurance history, thus effectively becoming the claimant's prior employer for purposes of chargeability. After the ending of her employment with the prior employer, the claimant allowed her nursing license to lapse in November 2009.

On May 11 the employer initiated communication via email to the claimant, asking that she submit an application for employment either on line or in person. Due to some apparent prior negative interactions with the employer in a prior unemployment related fact-finding interview, the claimant responded with at least mock surprise that the employer wished her to seek

employment. The employer responded that it believed it might have work suitable for her, and suggested she work through a local Agency office to seek to expedite the hiring process.

On May 12 the claimant indicated that the employer could send her an application and information regarding the available work for her review. The employer did not agree to send the claimant an application, but responded by indicating that the claimant could go to the employer's Muscatine, Iowa office for assistance in the application process, indicating that "we have a full time need as well as many other shifts that you will need to work at the facilities you have already worked. We will set your schedule according to your shift preference."

The claimant then responded by advising the employer that "since my nursing license is expired, I don't believe you would have any suitable employment for me at this time. However, I would be glad to apply if you would kindly send me an application in the mail." The employer did not further pursue obtaining the claimant's application, as in fact it did not have positions available for the claimant at that time since she did not have a valid nursing license.

The claimant had initially established an unemployment insurance benefit year effective September 13, 2009. Upon expiration of that claim year, she sought to file an additional claim effective September 12, 2010, triggering the issuance of a new notice to the employer, resulting in the employer's response raising the issue of the potential May refusal. Another representative's decision was issued on October 18, 2010 (reference 02) regarding another employer, concluding that the claimant's July 21, 2009 separation from that employer was disqualifying. It is not clear whether the claimant earned requalifying wages after that July 21, 2009 separation before she began receiving unemployment insurance benefits in her September 13, 2009 claim year.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work. Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if she has failed without good cause to accept suitable work when offered, or if she has failed without good cause to apply for suitable work. However, applying this statute, 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant. In this case, there was no bona fide offer of work as there was not a specific position or job being offered to her; at most, it was an offer of potential work. Further, the claimant did not outright refuse to apply; rather she was willing to apply if the employer had suitable work it could offer her as she did not have a current nursing license, which it did not.

As noted above, a failure to apply for suitable work without good cause can also be disqualifying. "Suitable work" necessitates that the available work be within the claimant's capabilities, including those related to occupational training and licensing. 871 IAC 24.24(2). The employer did not have "suitable work" for the claimant, given her licensing status at the time of the communication. The claimant did not fail to apply for suitable work.

The employer suggests that since the claimant had allowed her license to lapse that she was no longer "able and available" for work and thus should also not be eligible to receive unemployment insurance benefits. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, available for work, and earnestly and actively seeking work. Iowa Code § 96.4-3. Once a separation has occurred between an employee and employer, the determination as to the former employee's availability

is determined not by whether she could return to her prior employment, but whether she is "physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The fact that in May 2010 the claimant was not able to accept employment as a nurse does not dictate a conclusion that she was not able and available for work as a whole.

Benefits would be allowed, if the claimant was otherwise eligible. It appears that the claimant may not have been "otherwise eligible" for benefits in her September 12, 2009 claim year. The matter is remanded to the Claims Section for review and any necessary determination as to the effect of the representative's October 18, 2010 (reference 02) decision regarding a July 21, 2009 separation from a different employer on the claimant's receipt of benefits in the September 12, 2009 claim year.

DECISION:

The representative's October 15, 2010 decision (reference 03) is affirmed as modified with no effect on the parties. The claimant did not refuse a suitable offer of work or refuse to apply for suitable work in May 2010. The claimant was qualified to receive unemployment insurance benefits, if she was otherwise eligible. The matter is remanded to the Claims Section for review of the eligibility issue resulting from the unrelated decision regarding the July 21, 2009 separation from another employer.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs