

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDRA E CONRAD
Claimant

APPEAL NO. 11A-UI-02994-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AUREUS GROUP
CELEBRITY STAFFING**
Employer

OC: 01/09/11
Claimant: Appellant (2)

Section 96.5-3-a – Refusal of Work/Refusal of Recall

STATEMENT OF THE CASE:

Audra E. Conrad filed a timely appeal from an unemployment insurance decision dated March 8, 2011, reference 01, that disqualified her for benefits upon a finding that she had refused recall to suitable work with Celebrity Staffing on October 29, 2010. After due notice was issued, a telephone hearing was held April 6, 2011 with Ms. Conrad participating and being represented by Harley Erbe, Attorney at Law. Regional Manager Patty North participated for Aureus Group, doing business as Celebrity Staffing. Exhibits One through Three were admitted into evidence.

ISSUE:

Did the claimant refuse a suitable offer of work or recall to suitable work on October 29, 2010?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Audra E. Conrad was working on assignment for Celebrity Staffing on October 29, 2010. Her assignment at the Des Moines International Airport was ending that day. Ms. Conrad was being paid \$13.00 per hour on the assignment. Adam McCoy called Ms. Conrad on October 29 to inquire if she would be interested in an assignment for a customer service position with Aviva and an approximate salary of \$12.00 per hour. Ms. Conrad responded that she would not be interested at that rate of pay and indicated that she was looking for employment with medical benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant refused a bona fide offer of work or a bona fide recall to work on October 29, 2010. She did not.

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.

The statute must be read in conjunction with 871 IAC 24.24.

871 IAC 24.24(1)a provides:

In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it 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.

The evidence establishes that the personal contact was made in a telephone call from Adam McCoy to Ms. Conrad. Mr. McCoy was not called to testify although he is still an employee of the company. The evidence does not establish a bona fide offer of a specific job. While there

was discussion of the claimant's interest in a potential assignment with a different client, the conversation was too general to constitute a bona fide offer of employment and refusal. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 8, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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