

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARGARITA C LUCIO
Claimant

ALL IN A DAY LLC
Employer

APPEAL 18A-UI-03379-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 5, 2018, (reference 06) unemployment insurance decision that denied benefits based on her failure to accept a suitable offer of work. The parties were properly notified of the hearing. A telephone hearing was held on April 9, 2018. The claimant participated and was represented by attorney Lorraine Gaynor. The employer participated through Human Resource Specialist Toni Holguin and On-Site Employment Specialist Mary Newton. Employer's Exhibits 1 through 3 were received into evidence.

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 certified mail on December 18, 2017. The offer was for a temporary full-time, 40 hours per week, position in Algona, Iowa. The wage offered for the job is \$12.00. Claimant's average weekly wage is \$432.00. The offer was made in the seventh week of unemployment. Claimant declined the offer as she was living in Texas and the position was located in Algona, Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to accept a suitable offer of work, but had a good cause reason for doing so.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The offer was suitable as it was made in the sixth through twelfth week of unemployment and was a gross weekly wage of at least 75 percent on the claimant's average weekly wage during her highest quarter of the base period. Claimant declined the position, because it was located in Algona, Iowa and she resides in Texas. This is a good cause reason to fail to accept the offer. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The March 5, 2018, (reference 06) decision is reversed. Claimant failed to accept a suitable offer of work, but has shown a good cause reason for doing so. Benefits are allowed, provided claimant is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs