

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERRY L KULA
Claimant

L A LEASING INC
Employer

APPEAL 18A-UI-11699-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/10/17
Claimant: Respondent (4)

Iowa Code § 96.5(3)A – Failure to Accept Work
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 26, 2018 (reference 04) unemployment insurance decision that found claimant was eligible to receive unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 18, 2018. The claimant, Sherry L. Kula, participated personally. The employer, L A Leasing Inc., was represented by Colleen McGuinty and participated through witness Monica Beltran. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was a suitable offer of work made to the claimant and if so, did the claimant fail to accept and was the failure to do so for a good cause reason?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant had previously worked for this employer for at least four years. She had been placed in a position located at MedPlas. During her work placement at MedPlas she had working restrictions regarding her legs and foot that required she be able to sit and stand as needed during the workday. A copy of these written restrictions had been given to MedPlas and Staffing Network (the previous staffing agency that had originally placed her at MedPlas). The work restrictions stem from a personal injury or illness. She eventually separated from work in October of 2018 due to lack of work.

On November 9, 2018, the Ms. Beltran made two offers of work to claimant via telephone. The first offer of work was for a job placement at Orbis. The job was a production worker working on a press machine. It was for part-time work at \$12.00 per hour. Claimant asked if she would be allowed to work within her restrictions (sit and stand as needed) and Ms. Beltran told her that she did not think they would.

The second job was for a position at Polo working in either the sewing department or as a press operator. The rate of pay began at \$10.00 per hour. Claimant had previously worked in the sewing department at Polo and they did allow her to work within her restrictions (sit and stand as needed). Claimant told Ms. Beltran that she believed she had been previously discharged from Polo and that she was not eligible for rehire. Ms. Beltran told claimant that she would check with Polo to make sure she was eligible for rehire; however, claimant never heard back from Ms. Beltran whether or not she was eligible for rehire.

Claimant's unemployment insurance benefits original claim date is December 10, 2017 and her additional claim date is October 28, 2018. Her average weekly wage is \$381.46. Both offers were made in the second week of unemployment following her additional claim date. As of December 12, 2018, claimant has several personal family issues that she is dealing with and she has been unavailable for work due to dealing with these family issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

(emphasis added).

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".

Iowa Admin. Code r. 871—24.24(1) provides:

Failure to accept work and failure to apply for suitable work.

Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(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.

b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

Iowa Admin. Code r. 871—24.24(2) provides:

(2) Job within claimant's capabilities.

a. The job offered **must be within the claimant's physical capabilities** and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

b. If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work

until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871—24.24(3) provides:

(3) Each case decided on its own merits. Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

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.

Iowa Admin. Code r. 871—24.24(15) provides:

(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- a. Any risk to the health, safety and morals of the individual.
- b. The individual's physical fitness.
- c. Prior training.
- d. Length of unemployment.
- e. Prospects for securing local work by the individual.
- f. The individual's customary occupation.
- g. Distance from the available work.
- h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.
- i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.
- j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.
- k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.
- l. Whether the individual would be required to join or resign from a labor organization.

(emphasis added).

The offer regarding Orbis did not meet the claimant's physical fitness requirements that she be able to sit and stand as needed. Claimant had already provided written doctor notes to both MedPlas and Staffing Network. As such, claimant had good cause to refuse this offer of work

because it was not within her physical capabilities and the employer had knowledge of her physical restrictions. No disqualification shall be imposed regarding this offer of work.

The claimant's conversation with Ms. Beltran regarding the Polo placement was not a definite refusal of offer of work. Claimant specifically asked Ms. Beltran if she was actually eligible for placement because she believed she had been discharged from that job placement in the past. Ms. Beltran responded that she would check into the issue with Polo and get back in touch with claimant. She never got back in touch with claimant about whether she was actually eligible for rehire at Polo. As such, there was no definite refusal of offer of work for placement at Polo and there is no disqualification based upon this offer of work.

However, claimant credibly testified that she is unavailable for work effective the week beginning December 9, 2018 due to personal family issues that are taking the majority of her time. Availability for work is determined on a week-to-week basis. Benefits are withheld effective December 9, 2018 and continuing until such time as claimant makes herself available for work and is otherwise eligible.

DECISION:

The November 26, 2018 (reference 04) unemployment insurance decision is modified in favor of the appellant. Claimant had good cause to refuse one offer of work and there was no definite refusal of the other offer of work. As such no disqualification based upon refusal of offer of work is imposed and benefits are allowed, provided claimant remained otherwise eligible. Effective December 9, 2018 benefits are withheld due to the claimant being unavailable for work because of family responsibilities and benefits will be withheld until such time as the claimant makes herself available for work.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs