

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEIZARAE A JENKINS
Claimant

APPEAL NO. 13A-UI-12863-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRIENDS OF FAITH RETIREMENT HOMES
Employer

OC: 11/03/13
Claimant: Respondent (1-R)

Section 96.5-3-a – Work Refusal
871 IAC 24.24(8) – Refusal Within Benefit Year

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated November 15, 2013, reference 02, which held claimant eligible to receive unemployment insurance benefits finding that the claimant did not accept an offer of work with Friends of Faith Retirement Homes on February 13, 2013, but finding that the claimant did not have a valid unemployment insurance claim at the time. After due notice was provided, a telephone hearing was held on December 10, 2013. Although duly notified, the claimant did not participate. The employer participated by Mr. Kelly Manfull, Director, and Mr. Dane Anderson, Chef Supervisor.

ISSUE:

The issue is whether the claimant is subject to a benefit disqualification for refusing work during a time which she did not have a valid claim.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Deizarae Jenkins began employment with Friends of Faith Retirement Homes on March 25, 2011. Ms. Jenkins was employed as a part-time dietary server and was paid by the hour. At the beginning of the year 2013 Ms. Jenkins requested time off work for educational pursuits and her request was granted by the employer. On or about February 8, 2013, the employer attempted to recall Ms. Jenkins back to her usual job, however, it appears that the claimant indicated there were rescheduling issues and did not return at that time. On February 13, 2013, the employer attempted again to recall the claimant to work and was willing to allow the claimant to vary her working hours if necessary. Ms. Jenkins again did not respond to the employer's offer. Subsequently, the claimant was separated from her employment, however, it does not appear that the claimant's separation from employment has been adjudicated by Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

The sole question before the administrative law judge in this case is whether the claimant is subject to a benefit disqualification for refusing suitable work during a time that she did not have a valid claim for unemployment insurance benefits.

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.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3)

disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

In the case at hand the evidence in the record establishes that the claimant did refuse an offer of suitable work on February 13, 2013. The claimant was recalled to the same type of work at the same pay and the employer was willing to allow the claimant to vary her working hours to be compatible with her educational pursuits. The claimant, however, did not return. At the time of the offer of work on February 13, 2013, Ms. Jenkins did not have a valid claim for unemployment insurance benefits. The claimant did not open a claim for unemployment insurance benefits until November 3, 2013. The administrative law judge, therefore, does not have jurisdiction to disqualify the claimant from the receipt of unemployment insurance benefits as she did not have a claim for unemployment insurance benefits at the time of the work refusal.

The administrative law judge concludes based upon the evidence in the record, however, that a separation from employment subsequently occurred and that this matter may not have been adjudicated by Iowa Workforce Development. The subject of the claimant's separation from employment from this employer is, therefore, remanded to the Claims Division for investigation and the issuance of an appealable determination on the separation from employment by this claimant from this employer.

DECISION:

The representative's decision dated November 15, 2013, reference 02, is affirmed. The claimant is not subject to a benefit disqualification for refusal of suitable work as she did not have a valid claim for unemployment insurance benefits at the time of the February 13, 2013 refusal. The issue of subsequent separation from employment by this claimant from this employer is remanded to the Claims Section for an initial investigation and the issuance of an appealable determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs