

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN F MCPIKE
Claimant

SOUTHERN ENTERPRISES INC
Employer

APPEAL 17A-UI-09096-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Respondent (3)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the August 30, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that the claimant did not accept an offer of work, but that offer was not suitable. The parties were properly notified of the hearing. A telephone hearing was held on September 21, 2017.

Pursuant to Iowa Administrative Code rule 871—26.6(6), the administrative law judge consolidated this appeal for hearing along with appeal numbers 17A-UI-09097-LJ-T and 17A-UI-09098-LJ-T and held one consolidated hearing at 2:00 p.m. on September 21, 2017. All parties agreed to the consolidation, and no substantial rights of any party were prejudiced. The claimants, Heidi M. DeGroot, Karen McPike, and Claudia Elzinga, participated. The employer, Southern Enterprises, Inc., participated through Emily Covey, General Manager and Part Owner.

ISSUE:

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 reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a retail associate, until approximately July 15, 2017, when she was laid off due to a lack of work. Claimant had worked throughout her employment at the employer's location in Orange City, Iowa. Effective June 30, 2017, the employer closed its Orange City store. The employer retained claimant for several weeks after its declared closing date, and then she was laid off.

On June 30, the employer gave claimant a thank you letter with a substantial financial gift. (Exhibit 1-D) This letter also asked claimant to consider working with one of the employer's

other stores, though it did not mention what if any positions were available. On August 7, 2017, the employer sent claimants a letter following up about additional employment opportunities. (Exhibit 2-D) The employer states it has positions open in Sioux Center, Sioux City, Sheldon, and Spencer, and it encourages the recipient to go to one of the stores and speak with a manager about a job. The letter does not state whether these positions are full-time or part-time, and it does not state a rate of pay. On August 11, all three claimants went to the Sioux Center store to inquire about available work. They spoke with Vicky, who said she had a shift open one day per week from 1:00 p.m. until 5:00 p.m. She later spoke with McPike and said the shift would be from 1:00 p.m. until 8:00 p.m. None of the claimants accepted this offer, as it was only one day of work per week.

The employer sent two subsequent letters to each claimant. On September 5, the employer sent a letter indicating work was still available at the four stores. (Exhibit 3-D) This letter also states that each claimant's rate of pay would remain what it had been when working at the Orange City store. On September 15, the employer sent a letter reiterating that it had work available. (Exhibit 4-D) This letter also states, "These positions will not result in a reduction in pay or hours."

DeGroot was employed part-time as a manager at the Orange City store. She earned \$10.00 per hour. She averaged twenty-four hours per week. De Groot's average weekly wage is \$241.37. McPike was employed part-time as a retail associate at the Orange City store. She earned \$9.25 per hour. She averaged thirty-five hours per week. McPike's average weekly wage is \$194.70. Elzinga was employed part-time as a retail associate at the Orange City store. She earned \$9.25 per hour. She averaged between twenty and twenty-five hours per week. Elzinga's average weekly wage is \$182.24. All three claimants live in Orange City. Spencer is approximately 55 miles away from Orange City, and Sioux City is nearly that far away as well. None of the three claimants had been required to travel during their employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant refused an offer of work on August 11, and this offer was not suitable. The employer has not made any other offers of work.

Iowa Code § 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. (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(1)a provides:

(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.

Iowa Admin. Code r. 871-24.24(14)(a)(b) 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.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

Analysis – August 11 Offer

On August 11, all three claimants received offers to work for the employer's Sioux Center store one day each week. Elzinga and De Groot were offered four hours each week, and McPike was offered seven hours each week. This offer of work was extended to the claimants during their first five weeks of unemployment. The gross weekly wages for the work offered to them did not equal or exceed 100% of their average weekly wages. Therefore, this was not a suitable offer of work.

Analysis – All Other Communications from Employer

The employer sent the three claimants letters on June 30, August 7, September 5, and September 15. Each of these letters referenced employment opportunities that the employer has available. These letters are identical, and they do not state specific terms of employment. The letters do not indicate which of the stores the claimant would be working in or what her schedule would be. These letters do not provide sufficient information for the administrative law judge to determine whether the work offered is "reasonably suitable and comparable." None of the four letters sent from the employer constitute a bona fide offer of work. Therefore, the claimants cannot be faulted for failing to accept the vague offer communicated by the employer. Benefits are allowed

DECISION:

The August 30, 2017 (reference 01) unemployment insurance decision is modified in favor of the claimant/respondent, Karen F. McPike. The August 11, 2017, offer of work was not suitable, and the employer made no other offers of work. Benefits are allowed, provided claimant is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn