

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIA L MONTES**

Claimant

**APPEAL 19A-UI-07518-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**

Employer

**OC: 05/27/18**

**Claimant: Appellant (1)**

Iowa Code § 96.5(3)a – Failure to Accept Work

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On September 23, 2019, Maria L. Montes (claimant) filed a timely appeal from the September 20, 2019, reference 05, unemployment insurance decision that denied benefits effective May 19, 2019. After due notice was issued, a telephone conference hearing was held on November 5, 2019 and consolidated with the hearing for appeal 19A-UI-07521-SC-T. The claimant participated personally. The employer participated through Alexis Greenslade, Assistant Branch Manager, and was represented by Mai Lor, Unemployment Specialist. Spanish interpretation was provided by David (employee number 10300) from CTS Language Link. No exhibits were admitted into the record. The administrative law judge took official notice of the claimant's claim history.

**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: The claimant worked for the employer and was most recently assigned to its client, Helena, where she worked full-time hours as a packager earning \$13.00 an hour. On May 17, 2019, the claimant's assignment ended. On May 19, 2019, the claimant filed an additional claim for unemployment insurance benefits, reactivating the claim for benefits she originally filed on May 27, 2018. The claimant had claimed and received 18 weeks of unemployment insurance benefits prior to reactivating her claim. The claimant's average weekly wage for that claim year was \$518.67.

On May 21, 2019, Alexis Greenslade, Assistant Branch Manager, called the claimant to offer her a job at its client, Musco Lighting. The job was for a packager and assembler, working 40 hours a week, and earning \$13.00 an hour. The claimant would have earned gross wages of \$520.00 each week. The claimant declined the position stating she only wanted to work in all

Spanish speaking environment and she did not want to work with small tools. Musco Lighting is a diverse work environment with Spanish interpreters available on each line and small tools were part of the jobs she had previously held.

The claimant went to California in June to visit her ill son but came back after a short trip. She returned to California on July 12, where she stayed until September 6. The claimant was not seeking work while she was in California. She did work two days for the employer at Helena beginning September 20; however, she left that job to return to California after learning her son had taken a turn for the worse. The claimant's son passed away mid-October and the claimant has not yet returned to Iowa.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant failed to accept a suitable offer of work. Benefits are denied.

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 provides, in relevant part:

Failure to accept work and failure to apply for suitable work. Failure to accept work and apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been 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.

...

(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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The claimant provided contradictory and inconsistent testimony throughout the hearing. Therefore, her version of events is not credible.

The employer has established that the claimant refused a suitable offer of work. The employer made a bona fide offer of work when Greenslade spoke to the claimant. The offer of work was suitable as it was made during the 19<sup>th</sup> week of the claim and the claimant would have earned more than sixty-five percent of her average weekly wage at the job. At the time the offer was made, the claimant did not have good cause reasons to decline the position nor has it been established that she was not able to or available for work. The refusal to work anywhere but an all-Spanish speaking environment when interpreters are available does not constitute good cause to decline the position. Additionally, the jobs where the claimant had been assigned previously required the use of small tools so she possessed the necessary skills. Accordingly, benefits are denied.

**DECISION:**

The September 20, 2019, reference 05, decision is affirmed. The claimant failed to accept a suitable offer of work. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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