BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

MARIA D KATZENSTEIN	:	
Claimant	:	**HEARING NUMBER:** 15B-UI-11580
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
L A LEASING INC	:	
Employer		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-3-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board with the following additions:

The job offered to the Claimant was day-to-day and the Claimant was only guaranteed the one shift. The offer was made no more than 14 hours before the shift was to start. The Claimant did not have time to reschedule her job interview on the 11th.

REASONING AND CONCLUSIONS OF LAW:

In cases of "refusal of suitable work without good cause" we must engaged in a two-step analysis. In such cases, "[b]ased 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." 871 IAC 24.24(3)(emphasis added). First the agency must decide if an offer of suitable work is made. If not then the analysis is at an end, and the offer can be refused without consequence. If the offer is suitable, or assumed to be suitable for the purposes of analysis, then the agency must take up the question of good cause. If a Claimant has good cause for refusing a suitable offer then benefits are allowed *even if* the offer was suitable.

Where the claimant actually refuses work, as opposed to not applying for work, the refusal of suitable work question involves whether the work was "suitable" and, if so, whether the refusal was for "good cause". In *Pohlman v. Ertl Co.*, 374 N.W.2d 253 (Iowa 1985) the Supreme Court placed the burden of proof on good cause on the claimant. Subsequently in *Norland v. Iowa Department of Job Service*, 412 N.W.2d 904, 910 (Iowa 1987) the Court ruled that the employer had the burden of proving suitability of the offer. On the issue of suitability the Employer has a burden of putting on a *prima facie* case. The Claimant has a burden to identify the suitability factors at issue, at least as to some of them. *Norland v. IDJS*, 412 N.W.2d 904, 911 (Iowa 1987). If the employer proves that a suitable offer was made and refused, then the claimant can avoid disqualification by showing that the refusal was for good cause. Suitability of an offer is a fact issue that must be resolved "in light of those facts peculiar to each given case." *Norland v. IDJS*, 412 N.W.2d 904, 912 (Iowa 1987). "The question of good cause, like that of suitability, is a fact issue within the discretion of the department to decide." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In general, the suitability analysis is more abstract than the good cause analysis, that is, the job is viewed more in terms of the offer, what the Employer *offers* to do, and not as much in terms of what the Claimant anticipates happening. For example, a suitability factor is at issue if it may not be satisfied, not because it was a reason for the refusal. So for example, "[i]n order for work to be considered 'suitable' under section 96.5(3), it is mandatory that the gross weekly wages equal or exceed the statutorily prescribed percentages of base period wages. If gross weekly wages for the work do not equal or exceed those sums, the work is unsuitable as a matter of law and the actual motive of a claimant in refusing the work is immaterial." *Biltmore Enterprises, Inc. v. Iowa Dept. of Job Service*, 334 N.W.2d 284, 287 (Iowa, 1983).

Good cause is more individualized and more related to the circumstances of the Claimant. For example, not being willing to work on Sundays because of religious convictions is good cause. 871 IAC 24.22(2)(k). Similarly, "[l]ack 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." 871 IAC 24.24(4). Yet offers of work that require working on Sunday, or reliable transportation may very well be suitable offers – the issue being one of good cause. Suitability is not the end of the matter. In *Norland* the Court noted that Ms. Norland was "correct that suitable work may be refused with good cause.." *Norland* at 914. In *Pohlman v. Ertl Co.*, 374 N.W.2d 253 (Iowa 1985) the Supreme Court placed the burden of proof on good cause on the claimant. Notably in *Pohlman* the Iowa Supreme Court affirmed the agency denial of benefits but only after addressing and resolving both the issues of the suitability of the offer, and whether there was good cause for refusing the offer. Thus both issues must be resolved before denying benefits.

The standard for determining good cause for refusing work does not involve the statutory factors. Those factors are specifically to be applied only "[i]n determining whether or not any work is suitable for an individual…" Iowa Code §96.5(3)(a). Instead on the good cause issue the Supreme Court of Iowa set out the standard, in general terms in *Norland*. "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

Turning to this case we agree with the Administrative Law Judge that the offer of work was suitable. We thus must address whether the Claimant has proven good cause for the refusal.

As an initial matter we note that the Administrative Law Judge did not address good cause directly and only impliedly found against the Claimant on that issue. We thus really have no question of what weight to give the Administrative Law Judge's judgment on that point. It just wasn't addressed. When we review the facts and apply the good cause standard, as informed by rule 24.24 and *Norland*, we conclude that the Claimant has indeed proven good cause for refusing the suitable offer. The two key facts in our conclusion are that the offer was for a single guaranteed shift, and the Claimant had a job interview on the day in question. When added to the fact that the Claimant had no realistic chance to reschedule the job interview, we conclude that a reasonable person would refuse the offer. Weighing the guaranteed single shift against the possibility of a long-term job and choosing the chance for long-term work is a "real, substantial, and reasonable" reason for turning down the offer. We emphasize that this is not a finding that the Employer did anything wrong, or that the good cause was attributable to the Employer. As the plain language of the law makes clear the good cause need not be attributable to the Employer in refusal of work cases. *See* 871 IAC 24.24(4)(child care issues, family illness, transportation problems, all can be good cause for refusal). In as much as the Employment Security Law is meant to reduce unemployment, we find that the choice of the interview over the shift of work, given the particular circumstances of this case, was good cause for refusing suitable work and the Claimant is not disqualified.

DECISION:

The administrative law judge's decision dated October 29, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant refused suitable work but has proven the refusal was for good cause. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. The overpayment entered against Claimant in the amount of $1,044 is vacated and set aside.

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence was reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv