

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA M BAULDRY

Claimant

APPEAL NO. 10A-UI-01498-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**

Employer

**Original Claim: 11/15/09
Claimant: Appellant (1-R)**

Iowa Code section 96.5(3)(A) – Refusal of Suitable Work
871 IAC 24.24(14) – Employment Offer From Former Employer

STATEMENT OF THE CASE:

Shawna Bauldry filed a timely appeal from the January 19, 2010, reference 05, decision that denied benefits based on an Agency conclusion that she refused an offer of suitable work on December 14, 2009. After due notice was issued, a hearing was held on March 10, 2010. Ms. Bauldry participated. Aaron Schroeder, Branch Manager, represented the employer. The administrative law judge took official notice of the Agency's record (DBRO) of benefits disbursed to the claimant and wages reported by the claimant.

The work refusal issue was erroneously left off the hearing notice. The parties waived formal notice on the issue of whether Ms. Bauldry refused a suitable offer of employment on or about December 14, 2009.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment on or about December 14, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawna Bauldry established a claim for unemployment insurance benefits that was effective November 15, 2009 and received benefits. At the time Ms. Bauldry established her claim, she had most recently been employed with Manpower Temporary Services in Cedar Rapids. Ms. Bauldry had completed a full-time assignment for Manpower on November 12, 2009. That position had been first shift, 7:30 or 8:00 a.m. to 4:00 p.m., and had paid \$9.00 per hour. On November 25, 2009, Manpower offered Ms. Bauldry a new full-time, second-shift call center position. Ms. Bauldry had previously performed similar work. The position was to start on December 14, 2009, the hours would be 1:00 p.m. to 9:30 p.m. and would pay \$9.00 per hour. Ms. Bauldry told the employer she would accept the position. On December 10, Ms. Bauldry underwent the necessary pre-employment drug screening. On December 14, 2009, Ms. Bauldry did not appear for the assignment. Ms. Bauldry had decided to pursue other employment through Yellow Book. Ms. Bauldry did not have an offer of employment from Yellow Book, but merely wanted to forgo the work assignment so that she could participate in testing that might lead to a position at Yellow Book. Ms. Bauldry did not do well in the

pre-employment testing for the potential Yellow Book position and was not invited for an interview. The assignment through Manpower was no longer available after December 14, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 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.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

871 IAC 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.

The evidence in the record establishes that Manpower Temporary Services made a bonafide offer of employment to Ms. Bauldry on November 25, 2009 and that Ms. Bauldry indicated her rejection of the offer by failing to appear to start the assignment on December 14, 2009. The further employment offered by the employer was reasonably suitable and comparable to the work Ms. Bauldry had previously performed. The wages, hours, or other conditions of the offered work would not have been substantially less favorable to Ms. Bauldry than conditions prevailing for similar work in the locality. Ms. Bauldry did not have good cause under the law for rejecting the offered employment. A *chance* to *apply* for other employment when one has an offer in hand would not constitute good cause for rejecting the offer in-hand.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bauldry refused an offer of suitable employment from Manpower on December 14, 2009. Accordingly, Ms. Bauldry is disqualified for benefits until she has worked in and been paid for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated January 19, 2010, reference 05, is affirmed. The claimant refused an offer of suitable employment from the former employer. Effective December 14, 2009, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for entry of an appropriate overpayment decision in light of the present decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw