

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS O WINKLEMAN
Claimant

APPEAL NO. 14A-UI-13494-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC
Employer

**OC: 06/22/14
Claimant: Respondent (1)**

Iowa Code Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 22, 2014, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible; based on an Agency conclusion that on December 12, 2014 the claimant did not accept an offer of work that was not suitable because the wage offered did not provide at least 65 percent of the claimant's average weekly wage and the claimant was in week 25 of his claim. After due notice was issued, a hearing was held on January 27, 2015. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Joel Pulliam represented the employer and presented additional testimony through Jim Bruno and Cyndi Mahlstadt. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the benefits disbursed to the claimant and of the claimant's base-period wages (DBRO).

ISSUE:

Whether the claimant refused a bonafide offer of suitable employment on December 12, 2014 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant had performed work for the employer in a full-time computer help desk position at Athene in West Des Moines from September 2012 until June 27, 2014 when the work assignment came to an end. The work hours for that position had been 8:00 a.m. to 5:00 p.m., Monday through Friday. The pay had been \$16.25 per hour.

The claimant established a claim for benefits that was effective June 22, 2014 and received benefits for the period of June 29, 2014 through December 27, 2014 when he exhausted his maximum benefit amount. The claimant's average weekly wage during his highest earning base period quarter was \$865.85. Sixty-five percent of that amount would be \$562.80.

On December 12, 2014 the employer sent an email to the claimant regarding a possible work assignment. In the email the employer told the claimant that the assignment would pay \$13.50 per hour, would be a data entry/customer service representative position, would be located in West Des Moines or Clive, and that the work hours would be 8:00 a.m. to 5:00 p.m., Monday through Friday. The employer indicated that it would need to talk to the claimant further before an interview with the client business could be scheduled. The employer told the claimant that he would need to respond within two business days. Eleven minutes after the employer sent its email, the claimant responded as follows:

This position is a bit low on the wage. I'd like to get back around what I was getting when I was at Athene, which was \$16/hr. Also I would prefer a desktop support position, or at least a IT technical support role.

If you have anything that would be closer to that please feel free to let me know.

The pay for the proposed position would be \$540.00 for a 40 hour work week. At the time, the employer contacted the claimant about the proposed assignment, the claimant was in week 25 of his claim.

REASONING AND CONCLUSIONS OF LAW:

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 re-qualified. 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.

Iowa Code § 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 re-qualified. 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.

Iowa Administrative Code rule 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 it must first be established that a bona fide offer of work was made to the individual by personal contact 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 weight of the evidence indicates that the employer did not make a bonafide offer of work on December 12, 2014. The purpose of the contact was merely to provide the claimant with an opportunity to express interest in a position and to possibly interview for the position, but with no guarantee the claimant would be hired for a position. In the absence of a bonafide offer of employment, there can be no disqualifying refusal of work. Even if there had been a bonafide offer of employment, the work was not suitable due to the pay, because the claimant was in week 25 of his claim and the proposed pay was less than 65 percent of the claimant's average weekly wage during the highest earning base period quarter. The claimant remains eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The December 22, 2014, reference 01, is affirmed. The employer did not make a bonafide offer of employment on December 12, 2014; just an offer to possibly interview for a position. In the absence of a bonafide offer of employment, there can be no work refusal within the meaning of the law. Even if there had been a bonafide offer on December 12, 2014; the proposed work was not suitable within the meaning of the law. The claimant remains eligible for benefits provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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