

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SAMANTHA J GRAFF

Claimant

APPEAL 23A-UI-03682-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECOND GENERATION OF IOWA LTD

Employer

OC: 01/08/23

Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Second Generation of Iowa LTD, the employer/appellant,¹ filed an appeal from the Iowa Workforce Development (IWD) April 6, 2023, (reference 03) unemployment insurance (UI) decision. The decision allowed Ms. Graff REGULAR (state) UI benefits because IWD concluded she did not accept an offer of or referral to work with the employer on March 2, 2023 because the pay the employer offered was not at least 80 percent of her average weekly wage i.e., the pay was too low. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to the employer and Ms. Graff. The undersigned administrative law judge held a telephone hearing on June 1, 2023. The employer participated through Donna Hegedus, controller, and Becky Ames, assistant controller. Ms. Graff participated personally. The undersigned took official notice of the administrative record.

ISSUES:

Did the employer make a suitable offer of work to Ms. Graff?
If so, did she decline the offer and was it for a good cause reason?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Graff filed her initial claim for UI benefits effective January 8, 2023. Ms. Graff did not apply for any jobs with this employer. This employer did not offer Ms. Graff any jobs.

Ms. Graff applied for, and interviewed for a full-time producer job with employer KGAN. On February 27, 2023 Kristen Hamilton, KGAN news director, offered Ms. Graff the job via a phone call and an email. Ms. Hamilton sent Ms. Graff the email offer from domain sbgtv.com. KGAN offered Ms. Graff an annual salary of \$33,500.00 per year. On March 2, 2023, Ms. Graff declined the job because the pay was too low.

Ms. Graff participated in the fact-finding interview with an IWD representative. Ms. Graff told the IWD representative that she applied for, received an offer from and declined an offer from KGAN. The IWD representative told Ms. Graff that they could not find KGAN listed as an

¹ Appellant is the person or employer who filed the appeal.

employer. Ms. Graff saw this employer listed on the IWD UI decision when she received the decision in the mail.

When this employer received the IWD UI decision, Ms. Hegedus contacted staff at KGAN because this employer and KGAN work together on certain operations. KGAN staff told Ms. Hegedus that Ms. Graff had applied for, received, and declined an offer of work from KGAN. Ms. Hegedus explained in the appeal hearing that even though this employer and KGAN work together, they are separate entities and are owned by different entities. Ms. Hegedus testified that KGAN is owned by Sinclair Communications, LLC.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 week of unemployment.
 - (b) Ninety percent, if the work is offered during the second through the third week of unemployment.
 - (c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.
 - (d) Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.
 - (e) Sixty percent, if the work is offered after the eighth 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(15)i provides:

(15) *Suitable work*. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. First, the undersigned must decide whether the offer of work was suitable.² If the offer was suitable, the undersigned must decide whether claimant had good cause for refusal.³ The employer has the burden of proving the offer was suitable. If the offer was suitable, the claimant has the burden to establish the offer was refused for “good cause.” “Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious.”⁴

In this case, the employer did not make an offer of work to Ms. Graff because she never applied for a job with this employer. Ms. Graff applied for and declined a job from a different employer – KGAN. Since this employer did offer Ms. Graff any jobs and Ms. Graff did not refuse to accept work with this employer, benefits are allowed, pending remand.

² Iowa Admin. Code 871—24.24(3).

³ *Id.*

⁴ *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

DECISION:

The April 6, 2023, (reference 03) UI decision is AFFIRMED, PENDING REMAND. This employer never offered Ms. Graff work and Ms. Graff did not refuse to accept work with this employer. Benefits are allowed, pending remand.

REMAND:

The issues of whether employer KGAN made a suitable offer of work to Ms. Graff, whether Ms. Graff declined said offer, and if so, did she have a good cause reason, is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



Daniel Zeno
Administrative Law Judge

June 5, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.