

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINE M STEWART
Claimant

WAL-MART STORES INC
Employer

APPEAL 17A-UI-11019-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 24, 2017, (reference 08) unemployment insurance decision that denied benefits based upon a failure to accept a referral to suitable work. The parties were properly notified about the hearing. A telephone hearing was held on November 14, 2017. Claimant participated. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate.

ISSUE:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant applied for work with Wal-Mart in apparel and greeter positions. A company representative told claimant the only open jobs were full-time maintenance on the overnight shift and a scanner job (32 hours) from 4 a.m. 1 p.m. It did not have work available for jobs during regular business hours and limited weekend hours, which is what she worked during her base period. Wal-Mart hires start at \$11.00 per hour part-time and work into full-time. There is no information about whether the wage is comparable to the prevailing rate of pay for similar work in the Burlington, Iowa, area. Her average weekly wage (AWW) is \$553.00 and 75 percent of that is \$387.10. The communication was in the sixth week of unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes there was no offer of work and the work discussed was not suitable.

Iowa Code section 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:

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.

(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.

No offer of work was made, and the work that was discussed was not suitable as it did not meet the wage requirements or was for unsuitable hours given claimant's work history, or both.

DECISION:

The October 24, 2017, (reference 08) unemployment insurance decision is reversed. There was no offer of work and the work discussed was not suitable. The benefits withheld effective for this reason shall be paid to claimant, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs