

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE L MCMILLIN
Claimant

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

APPEAL 20A-UI-00409-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/23/19
Claimant: Appellant (4)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant/appellant, Jamie L. McMillin, filed an appeal from the January 9, 2020 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits because she failed to accept an offer of suitable work. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2020. The claimant participated personally. The employer, Iowa Department of Human Services-Glenwood, participated through Erin Bewley, hearing representative with Corporate Cost Control. Natalie McEwen and Kiley Kugland testified.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Is the claimant able to and available for work effective December 1, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for benefits with an effective date of June 23, 2019. She opened an additional claim with an effective date of October 20, 2019. Claimant’s average weekly wage is \$920.33.

Employer made an offer of work to claimant during the one week ending December 14, 2019. Employer offered claimant a position as a full-time residential treatment work at \$16.70 per hour for forty hours of work. Her weekly wage would be \$668.00. The offer was made in claimant’s

eighth week of unemployment. The claimant declined the offer, as she determined she would not be able to have overnight childcare for her children.

Claimant made weekly job search contacts for full-time work, for day hours, until she began new employment on January 13, 2020 with Nishna Productions.

REASONING AND CONCLUSIONS OF LAW:

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. First, was the offer for suitable work? And if so, did the claimant have a good cause for refusal? Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was made and that it was suitable. Iowa Code § 96.5(3)a(1) provides:

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.

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 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.

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

The claimant's average weekly wage is \$920.33. The offer was made in the eighth week of unemployment. Consequently, the wage offered must equal or exceed 75 percent of her average weekly wage. (75 percent of \$920.33= \$690.24). The wage offered in this case was \$16.70 per hour or \$668.00 per week. In this case, the offer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable.

The next issue is whether claimant refused the offer for good cause. The administrative law judge concludes that she did. The claimant is available for full-time day shifts but determined she was unable to work overnights due to her children. This restriction does not unduly limit her options for reemployment.

The final issue is whether claimant is considered not able to or available for work.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

For the period of December 1, 2019-January 11, 2020, the evidence establishes the claimant is able to and available for work as defined by the unemployment insurance law. She made her work searches and did not place restrictions on her ability to perform full-time work. Accordingly, benefits are allowed December 1, 2019-January 11, 2020 provided she is otherwise eligible.

Beginning January 12, 2020, the claimant would not meet the requirements of being and available for work due to full-time employment. 871 IAC 24.23(23). Benefits are therefore denied effective January 12, 2020.

DECISION:

The January 9, 2020 (reference 06) initial decision is modified in favor of the claimant/appellant. The offer of work was not suitable as it did not meet the wage requirements.

For the period of December 1, 2019-January 11, 2020, the claimant was able and available for work, and therefore, benefits are allowed during this period, provided she is otherwise eligible.

Beginning January 12, 2020, the claimant is not able and available for work due to full-time employment. Benefits are denied beginning January 12, 2020.

Jennifer L. Beckman
Administrative Law Judge
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Decision Dated and Mailed

jlb/rvs