

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH R WOOD
Claimant

APPEAL NO. 17A-UI-03472-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROWN POINT BUILDERS INC
Employer

OC: 10/16/16
Claimant: Appellant (2)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Elizabeth Wood filed a timely appeal from the March 24, 2017, reference 04, decision that disqualified her for benefits based on the claims deputy's conclusion that she had refused an offer of suitable work from Crown Point Builders on March 8, 2017. After due notice was issued, a hearing was held on April 21, 2017. Ms. Wood participated. The employer did not register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-03976-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO.

ISSUE:

Whether Ms. Wood refused an offer of suitable work on or about March 8, 2017 without good cause.

Whether Ms. Wood has been able to work and available for work since she established the additional claim for benefits that was deemed effective January 29, 2017.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Elizabeth Wood established an original claim for benefits that was effective October 16, 2016 and an additional claim for benefits that was deemed effective January 29, 2017. Ms. Wood's average weekly wage during her highest earning base period quarter was \$708.87. Seventy-five percent of that average weekly wage is \$531.65. Ms. Wood has at all relevant times resided in Mason City. Until February 1, 2017, Ms. Wood had worked full-time for a Mason City company for 23 years. Ms. Wood has never been employed by Crown Point Builders, Inc.

On March 7, 2017, a representative of Crown Point Builders offered Ms. Wood full-time employment as a carpenter. Ms. Wood had not previously worked as a carpenter or construction laborer. The company representative told Ms. Wood the employment would pay

\$16.00 per hour, would provide no health insurance or other benefits, and that the work hours would be 8:00 a.m. to 4:30 p.m., Monday through Friday. The company representative told Ms. Wood that the employment would involve performing carpentry work at various job sites one hour to 1.5 hours from Mason City. The first job site would be in Algona. The commuting distance from Mason City to Algona was more than an hour. The company representative told Ms. Wood that she would need to arrange her own transportation to and from the various job sites and that Ms. Wood would need to purchase her own tools. Ms. Wood initially accepted the offer of employment. However, on March 8, 2017, Ms. Wood notified Crown Point Builders that she was declining the employment due to the absence of health benefits. Ms. Wood has ongoing health issues, inquired into the cost of obtaining an individual health insurance policy and found the cost prohibitive. Ms. Wood determined that she needed to find employment that offered health insurance coverage.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

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.

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 24.24 provides, in relevant parts, as follows:

871—24.24 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.

24.24(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.

24.24(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in Ch 24, p.2 IAC subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

24.24(10) Distance to new job. Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

24.24(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- a. Any risk to the health, safety and morals of the individual.
- b. The individual's physical fitness.
- c. Prior training.
- d. Length of unemployment.
- e. Prospects for securing local work by the individual.
- f. The individual's customary occupation.
- g. Distance from the available work.
- h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.
- 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.
- j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.

- k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.
- l. Whether the individual would be required to join or resign from a labor organization

Crown Point Builders did indeed make a bona fide offer of employment on March 7, 2017. On March 8, 2017, Ms. Wood communicated a definite refusal of the offer of employment. Accordingly to Workforce Development records, the offer and refusal fell within the sixth week of Ms. Wood's additional claim for benefits. The \$16.00 per hour wage would have offered a weekly wage of \$640.00 for a 40-hour work week. That amount did indeed exceed 75 percent of Ms. Wood's highest base period quarter average wage. If the wage had been the only factor to be considered, the employment would be deemed suitable and the refusal would be deemed without good cause. However, the offered wage was only one factor to be considered. A number of other factors caused the offered employment not to be suitable employment for Ms. Wood. These included the commuting distance and associated expense. In light of Ms. Wood's ongoing health issues, it was not unreasonable for Ms. Wood to factor the absence of a health insurance benefit. Ms. Wood had not previously worked as a carpenter. Ms. Wood would have to purchase tools for the employment. Ms. Wood had worked in Mason City area for more than two decades and it was reasonable for Ms. Wood to conclude that she would be able to secure suitable work closer to Mason City.

The work refusal on March 8, 2017, did not disqualify Ms. Wood for benefits because the work was indeed not suitable based on the non-wage factors referenced above. Ms. Wood remains eligible for benefits provided she meets all other eligibility requirements.

DECISION:

The March 24, 2017, reference 04, decision is reversed. The claimant refused an offer of unsuitable employment on March 8, 2017. The work refusal on March 8, 2017, did not disqualify the claimant for benefits. The claimant remains eligible for benefits provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs