

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANEEN N JORVIG
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL 16A-UI-06014-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/16
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 20, 2016, (reference 04) unemployment insurance decision that allowed benefits based upon refusing an offer of work. After due notice was issued, a telephone conference hearing was held on June 15, 2016. Claimant participated. Employer participated through Kaleena Middendorf, Human Resources Assistant.

ISSUES:

Was a suitable offer of work made to the claimant?

If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer made multiple attempts to offer work to claimant via telephone during late April, 2016. That offer included the same terms as the claimant had enjoyed prior to being laid off by employer. The wage offered for the job is \$10.00 an hour. Claimant's average weekly wage is \$371.00. The employer made the offers by phone in the 15th week of unemployment. During the last week of April, 2016 employer did speak directly to claimant, and made an offer of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accept a suitable offer of work because she was not available to work.

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 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. 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.

The offer was suitable as it was the same hours and wages as claimant had been working for this same employer prior to being laid off, and claimant did not have a good cause reason for the failure to accept it.

For the reasons that follow, the administrative law judge concludes the claimant declined an offer of work because she was not available.

Iowa Admin. Code r. 871-24.24(4) provides:

- (4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is

the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code § 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".

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, the claimant is not disqualified from receiving benefits, but is not eligible for benefits beginning on April 24, 2016. Benefits are withheld until such time as claimant makes herself available for work.

DECISION:

The May 20, 2016, (reference 04) unemployment insurance decision is modified in favor of the appellant. Claimant declined an offer of work but was unavailable at the time. Benefits are withheld effective April 24, 2016, until such time as the claimant makes herself available for work.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs