

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONYA R COX
Claimant

MIDWEST PROFESSIONAL STAFFING LLC
Employer

**APPEAL 17A-UI-09878-CL-
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/09/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 19, 2017, (reference 03) unemployment insurance decision that denied benefits based upon a refusal to accept suitable work. The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa on October 12, 2017. Claimant participated. Employer participated through administrative manager Liz Wilkinson and senior recruiter Chelsea Delleman. Employer's Exhibits 1 through 10 were received. Claimant's Exhibits A through D were received.

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: On August 24, 2017, employer sent claimant an email informing her of two opportunities it believed claimant might be interested in and qualified for. The first position was a full-time annuities service specialist earning \$14.00 per hour during regular business hours in West Des Moines, Iowa. The second position was a full-time data entry specialist earning \$13.00 per hour in West Des Moines, Iowa. If claimant informed employer she was interested in either position, it would then submit her resume to the client company who had the ultimate authority to decide whether employer would hire claimant for the assignment.

On August 24, 2017, claimant spoke on the phone with senior recruiter Chelsea Delleman regarding the annuities service specialist opportunity. Claimant stated she wanted time to think about it. Claimant was unsure whether she wanted to work for employer because she believed it was untruthful during a fact finding interview with the Iowa Workforce Development on August 2, 2017. Claimant also stated she had an upcoming interview on August 28, 2017, for a position with MetLife as a full-time customer service representative earning \$16.25 per hour, and she wanted to see how the interview went.

On August 28, 2017, Delleman sent claimant an email stating:

I am following up to see how your interview today with MetLife went? I am also check [sic] in on the time sensitive position that we discussed Thursday and Friday last week. You wanted to hold off being submitted until you had this interview. As this position is time sensitive I need to know by end of day today if you would like to be submitted.

Later that day, claimant tried to call Delleman, but could not reach her. Claimant sent an email stating her interview with MetLife went well and she was scheduled for a second interview the next day. Claimant stated she wanted to follow through with the MetLife interview process, but was interested in the annuities specialist position and would follow up with Delleman.

The opportunity to submit resumes to the client company for the annuities specialist position closed the next day as employer submitted the requisite number of resumes from other individuals.

Claimant and employer never communicated further about the position. Claimant was eventually offered a position with MetLife, which she accepted and will begin later in October 2017. Claimant also began a position with Wells Fargo in September 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to claimant.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

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

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.

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).

Iowa Admin. Code r. 871-24.24(1) provides:

(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.

b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

In this case, employer offered claimant an *opportunity* to submit her resume to a client for a *possible* offer of work. This is not a bona fide offer of work. Therefore, there was no offer of work and no definite refusal of work.

DECISION:

The September 19, 2017, (reference 03) decision is reversed. Employer did not communicate an offer of work to claimant. Therefore, no work refusal occurred. Benefits are allowed, provided claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed
cal/scn