

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY L ESTABROOK
Claimant

L A LEASING INC
Employer

APPEAL 18A-UI-02975-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/12/17
Claimant: Respondent (2)**

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:

L A Leasing, Inc. (employer) filed a timely appeal from the February 22, 2018, reference 02, unemployment insurance decision that allowed benefits based on the determination Kimberly L. Estabrook (claimant) did not refuse a suitable offer of work. After due notice was issued, a telephone conference hearing was held on April 2, 2018. The claimant participated. The employer participated through UI Benefits Administrator Colleen McGuinty and Account Manager Vanessa Aguirre. The Employer's Exhibit 1 was admitted without objection.

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: The claimant worked her entire base period for the employer and was assigned to work at Menasha Packaging as a Shipping Clerk. She worked in the office and was responsible for doing paperwork and shipping product. She worked 40 hours per week earning \$12.00 to \$13.32 an hour and started on second shift although she was later moved to first. That position ended on November 13, 2017. The claimant filed her claim for benefits effective November 12, 2017.

The employer made an offer of work to claimant via text message on December 22, 2017. That offer did not have any set terms and a modified offer was made on January 18, 2018. It was a position for Shipping and Receiving personnel with HWH on the second shift at 40 or more hours per week. The wage offered for the job is \$10.00 an hour, which is comparable to the prevailing rate of pay for similar work in the claimant's area. The claimant's average weekly wage during her base period was \$524.19. The offer was made in after the 5th week of unemployment.

The claimant refused the offer the week of January 14, 2018, as her prior job was in the office and this other job would require her to work on the warehouse floor at times physically loading the product into the boxes. Some of the parts being loaded could weigh up to 80 pounds, but the employer had equipment to assist with lifting heavy items. The claimant did not have previous experience working with the equipment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to accept a suitable offer of work. Benefits are denied effective January 14, 2018.

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. (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.

The offer was suitable as it was for a position in which the claimant had experience and claimant did not have a good cause reason for the failure to accept it. The pay offered was \$400.00 a week, which is more than 75% of the claimant's average weekly wage or \$393.14. Additionally, while the claimant did not have experience working the lifting equipment, not all parts would require her to use lifting equipment and she could have received training. The claimant's desire to work in an office instead of the warehouse floor does not render this job unsuitable. The claimant refused a suitable offer of work effective January 14, 2018. Benefits are denied.

DECISION:

The February 22, 2018, reference 02, decision is reversed. The claimant failed to accept a suitable offer of work the week of January 14, 2018. Benefits are withheld beginning January 14, 2018, until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn