COURTNEY P CAROLUS
Claimant

BREMER COUNTY AUDITOR
Employer

APPEAL 17A-UI-03529-JCT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/05/17
Claimant: Respondent (1R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 27, 2017, (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 25, 2017. The claimant did not respond to the notice of hearing to furnish a phone number and did not participate. The employer participated through Susan Lahr, director of supportive community living. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

The claimant worked for this employer from September 17, 2014 until December 28, 2016 as a residential specialist, on an on-call status, making $10.08 per hour. The employer representative believes the claimant may have been a part-time employee at some point during her employment, before moving to an on-call only position.

The claimant established a claim for unemployment insurance benefits with an original claim date of March 5, 2017. The employer made an offer of work to claimant via text message through the program supervisor on multiple occasions between November 16 and December 16, 2016. The claimant did not have a valid claim at the time the offer was made. The claimant's average weekly wage is $326.57.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to claimant, when she had a valid claim for benefits.

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:
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> (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.

Iowa Admin. Code r. 871-24.24(8) provides:

> (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 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.

In this case, the employer reported an offer or repeated offers of work were made to the claimant from November 16 through December 16, 2016. The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits are allowed.

DECISION:

The March 5, 2017, (reference 02) decision is affirmed. The claimant failed to accept an offer of work made outside of her benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The on-call wage credits issue under Iowa Admin. Code r. 871-24.22(2)i(3) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn