

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE L ANDERSON**  
Claimant

**APPEAL NO. 14A-UI-06034-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAC INC**  
Employer

**OC: 05/04/14**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Julie Anderson filed a timely appeal from the June 4, 2014, reference 02, decision that disqualified her for benefits based on an Agency conclusion that she failed to accept a referral for suitable work with DAC, Inc. on May 8, 2014. After due notice was issued, a hearing was held on July 7, 2014. Ms. Anderson participated. Dara Fishnick represented the employer. Exhibit One and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUES:**

Whether Ms. Anderson refused an offer of suitable employment, without good cause, at a time when she had an active claim for unemployment insurance benefits.

Whether Ms. Anderson has been able to and available for work since she established her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Julie Anderson was employed by Community Care, Inc. (CCI) as a full-time Direct Support Professional (DSP). CCI is, or was, a private non-profit agency. In Ms. Anderson's DSP position, she assisted and supported disabled individuals with activities of daily living. Ms. Anderson last performed work for CCI on May 7, 2014.

In April 2014 the management of CCI announced that CCI was going to cease operations and that a different non-profit agency, DAC, Inc., was going to take over operations. The management was to carry over to the new owner. The management advised employees, including Ms. Anderson, that all of the DSPs would be allowed to continue their employment under the new ownership. In April Ms. Anderson participated in an interview process with DAC, Inc. and underwent the required health screening.

On April 29, 2014 Ms. Anderson told Dara Fishnick, Intermediate Care Facility for Intellectually Disabled (ICFID) Director, that she was not interested in becoming a DAC, Inc., employee. Ms. Fishnick told Ms. Anderson that DAC, Inc. would offer the same wage Ms. Anderson had previously received, \$14.71 per hour. Ms. Fishnick spoke to Ms. Anderson about DAC's agreement to provide all employees with 24 hours of PTO benefit at the start of the employment. Ms. Anderson reaffirmed that she was not going to take a position with DAC.

On April 30, 2014 Ms. Fishnick went to the vocational facility where Ms. Anderson was working and provided most of the DSPs with offer letters from DAC, Inc. The offer letters were erroneously dated May 29, 2014. Ms. Fishnick was busy attending to clients, so Ms. Fishnick did not provide Ms. Anderson with an offer letter at that time.

On May 2, 2014 Ms. Fishnick returned to the vocational facility to provide Ms. Anderson with an offer letter. Ms. Fishnick spoke to Ms. Anderson directly. Ms. Anderson knowingly and intentionally refused to receive the offer letter into her possession. Though Ms. Anderson was washing dishes and had a client present, neither of those factors prevented her from acknowledging and accepting the employer's offer letter into her possession.

Had Ms. Anderson accepted the DAC offer of employment, the new employment would have provided her with the same hourly pay, same work hours, and same work location. Given Ms. Anderson's full-time status, the offered employment would bring about \$588.40 per week, based on a 40-hour work week.

Ms. Anderson established a claim for unemployment insurance benefits that was effective May 4, 2014, at a time when she still had a standing offer of employment with DAC, Inc. Ms. Anderson's sole base period employer was Community Care, Inc., employer account number 104256. Ms. Anderson's base period consisted of the four calendar quarters in 2013. During the first quarter 2013, Ms. Anderson had her highest base period earnings. Her average weekly wage for that calendar quarter was \$759.34.

Ms. Anderson commenced her search for new work during the benefit week that ended May 17, 2014. During that week, and each additional week, through the benefit week that ended June 28, 2014, Ms. Anderson made two job contacts.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Admin. Code r. 871-24.24(1)a, (8) 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.

(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.

The administrative law judge must follow the black letter law contained in the Iowa Code and the Iowa Administrative Code. The weight of the evidence establishes bonafide offers of employment on April 29, 2014 and May 2, 2014, coupled with bonafide refusals on those same days. The offers and refusals occurred *before* Ms. Anderson established her claim for benefits and, therefore, cannot serve as a basis for disqualifying Mr. Anderson for benefits under Iowa Code Section 96.5(3). See Iowa Administrative Code rule 871 – 24.24(8).

Additionally, under Iowa Section 96.5(3)(a), the administrative law judge would have to conclude that the offered work was not suitable because it did not provide 100 percent of the average weekly wage during Ms. Anderson's highest earning base period. Ms. Anderson is eligible for benefits, provided she is otherwise eligible.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. Anderson has been able and available for work since she established the claim that was effective May 4, 2014. Ms. Anderson was still employed with CCI during the majority of that week. During the weeks that followed, through at least the benefit week that ended June 28, 2014, Ms. Anderson made two job contacts per week to demonstrate an active and earnest search for new employment. The determination of whether Ms. Anderson meets the work availability requirement does not hinge on whether she elects to make herself available for work with DAC, Inc. Effective May 4, 2014 Ms. Anderson is eligible for benefits, provided she meets all other eligibility requirements.

**DECISION:**

The claims deputy's June 4, 2014, reference 02, is reversed. The offers and refusals predated the claimant's claim for benefits and do not disqualify her for benefits. The employer did not meet the suitability requirements because it did not offer 100 percent of the average weekly wage from the claimant's highest earning quarter in the base period. The claimant has been able to and available for work since she established her claim. The claimant is eligible for benefits, provided she is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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