

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBY M MCDONALD
Claimant

APPEAL NO. 12A-UI-05284-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 01/01/12
Claimant: Respondent (1)

Section 96.5-3 – Refusal/Suitable Work

STATEMENT OF THE CASE:

TPI Iowa LLC filed a timely appeal from a representative's decision dated May 3, 2012, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 31, 2012. The claimant participated. The employer participated by Ms. Danielle Williams, human resource coordinator.

ISSUE:

At issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Abby McDonald was employed by TPI Iowa LLC from April 18, 2011, until December 29, 2011, when she was laid off work. The claimant was employed as a full-time production worker and was being paid by the hour. On or about April 16, 2012, TPI Iowa LLC attempted to recall Ms. McDonald back to her regular job with the company. The company's human resource coordinator, Danielle Williams, left two voicemail messages for the claimant on April 16, 2012, informing the claimant of the recall. When the claimant did not respond to the two voicemail messages left, the employer concluded the claimant was not accepting the recall.

Ms. McDonald had lost her telephone during the period around April 16, 2012, and did not receive direct notice that she was being recalled to work. The claimant had heard informally from other workers that a recall was taking place. The claimant did not contact the employer, based upon information provided from other individuals, because Ms. McDonald felt she would be re-assigned to a job that the claimant believed was harmful to her health.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant refused without good cause an offer of suitable work. It does not.

Iowa Code section 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.

871 IAC 24.24(1)a 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.

In the case at hand, the evidence in the record does not establish that a bona fide offer of work was made to Abby McDonald on or about April 16, 2012. The evidence in the record establishes that personal contact was not established between TPI Iowa LLC and Ms. McDonald at that time and that the offer of recall to work was made only by leaving telephone messages. The evidence does not establish that a registered letter was sent to the claimant in lieu of personal contact. Because the evidence in the record does not establish that the employer has met the requirements of a bona fide offer of work, the administrative law judge must conclude that there was no refusal to accept an offer of suitable work. Unemployment insurance benefits are allowed, provided the claimant continues to meet all eligibility requirements of Iowa law.

DECISION:

The representative's decision dated May 3, 2012, reference 02, is affirmed as modified. The claimant is eligible to receive unemployment insurance benefits, as no bona fide offer of suitable work was made. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw