

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIE M BATES
Claimant

ARETE TECHNOLOGIES INC
Employer

APPEAL 22A-UI-06838-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/11/21
Claimant: Respondent (4)**

Iowa Code § 96.5(3)a – Failure to Accept Suitable Work
Iowa Code section 96.4(3)a – Ability to and Availability for Work
Iowa Admin. Code 871—24.22(2)(H)- Failure to Accept Suitable Work
Iowa Admin. Code 871—24.24(2)(2)A- Employment Relationship

STATEMENT OF THE CASE:

The employer, Arete Technologies Inc., filed a timely appeal from the March 2, 2022, (reference 07) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 27, 2022. The claimant did not participate. The employer participated through Executive Director Elle Morsan. Official notice was taken of the agency records.

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 filed an original claim for benefits on April 11, 2021. The claimant's average weekly wage for her 2021 claim was \$597.23.

The claimant last worked for Athene Annuity and Life on January 7, 2022. On January 30, 2022, the claimant filed an additional claim on her 2021 claim.

On February 7, 2022, Senior Recruiter Aaron Green offered a position to the claimant with the State of Iowa performing call center customer service functions in Des Moines, Iowa stating on February 14, 2022. The claimant would work 40 hours per week in the role. Her hourly rate would have been \$19.00 per hour. The claimant said she could not take the position because she had just accepted another offer from another employer. The claimant hung up on Mr. Green immediately after giving him this information.

The administrative record shows the claimant continued to make weekly claims for the weeks ending February 5, 2022 through April 23, 2022. The claimant reported earning \$0.00 for each of these weeks. There is no information in the record regarding the claimant's ability and availability for work for this period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not required to accept the work because it was not suitable. The administrative law judge finds the issue regarding whether the claimant was an employee of the employer is in error because it is a job refusal case. The administrative law judge finds the claimant has failed to meet her burden that she was able and available effective February 5, 2022.

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 the offer was suitable. Iowa Code § 96.5(3)a(1) provides:

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.

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 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(7) provides:

- (7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

Here the claimant could not accept the offer because she had already accepted another position. As a result, the claimant is not disqualified for refusing this offer under Iowa Admin. Code r. 871-24.24(7).

Iowa Code section 96.4(3)a provides:

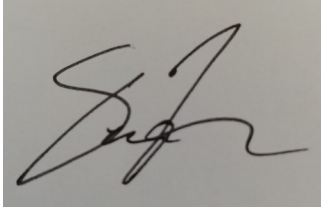
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

It is the claimant's burden to show she is able and available for work. The record reflects she said she had another job offer, but there are not any earnings reported in her weekly claims nor is there any evidence she worked for this employer. The claimant has not presented information she was able and available for work during the period effective February 5, 2022. Benefits are denied.

DECISION:

The March 2, 2022, (reference 07) decision is modified in favor of the appellant. The claimant is excused from accepting the offer of work because she had another job offer. However, the claimant has not met her burden to show she was able and available for work effective February 5, 2022. The issue regarding whether the claimant is an employee of the employer is in error because this is a work refusal case. Benefits are denied.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 12, 2022
Decision Dated and Mailed

smn/scn