

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNE M AHRENS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 16A-UI-07385-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/22/16
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 28, 2016, (reference 03) unemployment insurance decision that denied benefits based upon a work refusal. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2016. Claimant participated. Employer participated through risk manager Steve Volle and human resources coordinator Bailey Harris. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

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?

Is the claimant able to work and available for work effective June 5, 2016?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Human resources coordinator Bailey Harris contacted claimant by telephone on Friday, June 10, 2016, at approximately 9 a.m. to advise her of a potential job with a seed company (Monsanto) in Ames, Iowa. The job would be a full-time, first shift, lab research assistant. The wage for the job is \$13.00, which is comparable to the prevailing rate of pay for similar work in the Boone area. Claimant's average weekly wage is \$360.00. The communication was in the third week of unemployment. Claimant had also worked through ASI for Iowa State University as a lab research assistant. (Claimant's Exhibit A) Claimant declined as she planned to return to the Iowa State job in September 2016. Claimant next contacted ASI on July 13, 2016, because she was upset about the employer's protest of unemployment insurance benefits but did not request work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was made but the claimant failed to accept the referral to potential work.

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.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The employer did not make an offer of work, but a referral to an interview for possible work.

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(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(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is

the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The claimant declined an offer of work because she was waiting to return to work at Iowa State University in September 2016. Since she was holding herself out of employment opportunities while waiting to return to that work, she is not considered available for work effective June 12, 2016.

DECISION:

The June 28, 2016, (reference 03) unemployment insurance decision is modified in favor of the appellant. Claimant failed to accept a referral to potential work because she was holding herself out for other employment. Benefits are withheld effective June 12, 2016, rather than June 5, 2016, until such time as the claimant makes herself available for work. The overpayment amount (unemployment insurance decision July 22, 2016, reference 04) shall be adjusted accordingly.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs