

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONI L KUNZ**  
Claimant

**APPEAL NO: 14A-UI-06157-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY CARE INC**  
Employer

**OC: 05/04/14  
Claimant: Respondent (5)**

Section 96.5-1-i – Voluntary Quit/Segregable Business Sale  
Section 96.5-3(a) – Suitable Offer of Work

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated June 3, 2014 (reference 02) that held claimant was laid-off due to a lack of work on May 7, 2014 and benefits are allowed. A telephone hearing was held on July 9, 2014. The claimant participated. Kelli Schmidt, HR Director, and Dara Fishnick, Director, participated for DAC INC. Employer Exhibit One was received as evidence.

**ISSUE:**

The issue is whether claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on April 22, 2014 and last worked for the employer/Community Care as a full-time support staff/C.N.A. on May 7, 2014. The employer was the subject of government legal action for Medicaid fraud and its' funding was cut. When the employer ran out of money to conduct business and lost its state facility licensing, the business operation was acquired by DAC INC.

A DAC Inc. representative conducted an employee meeting claimant attended where continuing employment was discussed. Claimant was told her start pay would be \$11.00 an hour for the same job. She rejected the offer as she had been making \$12.98. There was a further communication between claimant and Director Fishnick about continuing employment on April 28, but claimant did not receive an employment offer letter before she left on May 7, because it believed claimant had declined continuing employment. Claimant did not keep a TB test appointment although she had submitted an employment application.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-i provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of § 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The administrative law judge concludes claimant voluntarily quit with good cause on May 7, 2014 when Community Care transferred its business to DAC Inc. and it did not offer claimant suitable work.

While it appears this was a forced or involuntary transfer of the business operation rather than a voluntary sale, the key issue is whether employer communicated a suitable offer of work to claimant.

The employer prepared written job offer letters but it did not submit one to claimant because it believed she did not want to continue employment. Claimant believed her start pay at DAC would be \$11.00 an hour based on an employee meeting and she did not receive a written offer of employment though one had been prepared for her.

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.

The administrative law judge further concludes the employer did not make a suitable offer of work to claimant. The employer could have provided claimant with a written letter job offer as it did other prospective employees but did not do so. The employer had a prepared written offer of employment available on April 29, but chose not to submit it to claimant before she left on May 7.

**DECISION:**

The department decision dated June 3, 2014 (reference 02) is modified without effect. Claimant voluntarily quit with good cause May 7, 2014 after the employer acquired business by transfer and its employer did not offer claimant suitable work. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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