

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH P PENRY
Claimant

LA LEASING INC
Employer

APPEAL 16A-UI-08959-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/15
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the August 11, 2016, (reference 08) unemployment insurance decision that allowed benefits based upon refusing an offer of work. After due notice was issued, a telephone conference hearing was held on September 2, 2016. Claimant participated. Employer participated through unemployment benefits administrator Colleen McGuinty and industrial account manager Ali Mangelsdorf. Employer's Exhibit 1 was received.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and 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: Employer made an offer of work to claimant via telephone on July 27, 2016. That offer was for a position working as an inventory verifier. The wage offered for the job is \$10.00 per hour for 40 hours per week, which is comparable to the prevailing rate of pay for similar work in the area. Claimant's average weekly wage is \$393.62. The position was located 15.5 miles from claimant's home. Claimant previously worked as a material moving worker for \$11.00 per hour.

Claimant was required to start the position on July 29, 2016. Claimant could not start the position on July 29, 2016, because he was responsible for child care that week and was unable to obtain alternative child care with short notice. Claimant could have obtained child care by August 1, 2016, but the offer was contingent upon him starting on July 29, 2016. Therefore, claimant declined the offer of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant denied an offer of work because he was unavailable at the time.

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).

Here, the offer of work was suitable. The weekly wage of the position offered exceeded claimant's average weekly wage. The position did not compromise claimant's safety or morals, and it was within a reasonable distance from his home.

The next issue is whether claimant refused the offer of work for a good cause reason. Claimant refused the offer of work because he needed to obtain childcare. Claimant was unable to do so with such short notice, but would have been available by Monday, August 1, 2016. In other words, the claimant declined an offer of work because he was not available during the week ending July 30, 2016, due to childcare obligations.

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 § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work due to childcare obligations. Therefore, the claimant is not disqualified from receiving benefits, but is not eligible for benefits during the week ending July 30, 2016.

DECISION:

The August 11, 2016, (reference 08) decision is modified in favor of appellant. Claimant declined an offer of work but was unavailable at the time. Benefits are withheld during the week ending July 30, 2016.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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