

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAFFITE D PIERRE
Claimant

**L A LEASING INC
SEDONA GROUP**
Employer

APPEAL 15A-UI-13576-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/07/14
Claimant: Respondent (4)**

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the November 30, 2015 (reference 03) unemployment insurance decision that allowed benefits based upon a work refusal and being available for work. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2016. Claimant participated. Employer participated through unemployment benefits administrator Colleen McGuinty and administrative assistant Corey Thompson.

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?

Was the claimant able to and available for work the week-ending November 7, 2015?

Has the claimant been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 5, 2015, Thompson made an offer of work to claimant with the following terms: at Whirlpool in Amana, Iowa for first shift, 40 hours per week, \$10 per hour, as a production worker to begin the following day. He had called in a couple of days earlier and was told there were two people ahead of him who could accept the job. When he called back that job was still open but he could not report with short notice because of having to set up child care. While child care is now set up, it took him a week to make tentative arrangements. Distance was not a problem. He did make a weekly claim for benefits the week ending November 7, 2015; in the gross amount of \$296. The administrative record reflects that amount was used to partially offset a prior overpayment.

On November 9, Thompson offered claimant work at PPC in West Branch, 54.2 miles distant on second shift as a full-time machine operator at \$10.40 per hour to begin on November 10. Claimant had explained to Ed and Tanner at hire, and again that day, which because he is a single parent he is not interested in second shift and has not worked that shift before.

On December 2, Thompson offered claimant a one-day assignment as a banquet server at the Marriott in Coralville, 35.5 miles distant, at \$9 per hour from 3:00 p.m. to 1:00 a.m. He again explained that he wants first-shift work and a long-term assignment.

The wages offered for the jobs are comparable to the prevailing rate of pay for similar work in the eastern Iowa area. Claimant's average weekly wage is \$524.88. The offer was made beyond week 18 of unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not available for the November 5, 2015 offer of work due to a lack of child care and the other two offers were not suitable.

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) 100 percent, if the work is offered during the first five weeks of unemployment.
- (2) 75 percent, if the work is offered during the sixth through week 12 of unemployment.
- (3) 70 percent, if the work is offered during week 13 to 18 of unemployment.

(4) 65 percent, if the work is offered after week 18 of unemployment.

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 § 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".

The November 9 and December 2 offers were unsuitable, as they were for second shift and too distant from his residence. The claimant declined a suitable offer of work on November 5 because he was not available. Therefore, the claimant is not disqualified from receiving benefits but is not eligible for the period from November 1 to November 7, 2015. Benefits are allowed effective November 8, 2015; since he had tentative child care arranged by then.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The November 30, 2015 (reference 03) unemployment insurance decision is modified in favor of the appellant. The November 9 and December 2 offers of work were not suitable. Claimant declined an offer of work on November 5 but was unavailable at the time. Benefits are withheld for the one-week ending November 7, 2015 and allowed effective November 8, 2015, provided he is otherwise eligible. Claimant is overpaid benefits in the amount of \$296.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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