

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA GROTE
Claimant

APPEAL NO. 17A-UI-01707-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE NURSING ENTERPRISES INC
Employer

OC: 01/29/17
Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Offer of Suitable Work

STATEMENT OF THE CASE:

Tri-State Nursing Enterprises, Inc, the employer, filed a timely appeal from a representative's decision dated February 7, 2017, reference 02, which held the claimant eligible to receive unemployment insurance benefits, finding that the claimant did not accept an offer of work with Tri-State Nursing Enterprises on April 1, 2016, but allowing benefits because the claimant did not have a valid unemployment insurance claim for benefits at that time. After due notice was provided, a telephone hearing was held on March 8, 2017. Although the claimant provided a telephone number for the hearing, she was not available at the telephone number provided. Two messages were left for the claimant. The employer participated by Mr. David Roberts, Staffing Supervisor.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Julia Grote began working for Tri-State Nursing Enterprises, Inc., a temporary medical employment service, on April 22, 2015. Ms. Grote was assigned to work at various health providers working as a certified nursing assistant and was paid by the hour. The employer is flexible and allows its temporary nursing staff flexibility in whether they will accept assignments. The employer had noted a downturn in the number of assignments that Ms. Grote was accepting beginning in October 2016.

The medical staffing agency contacted the claimant by telephone on March 15, 2016, and offered the claimant a CNA position on a day-by-day basis, however, the claimant declined. On April 1, 2016, the medical staffing agency left the claimant a voice mail message on her answering machine offering her work as a certified nursing assistant. The claimant did not respond to the message.

Ms. Grote opened a claim for unemployment insurance benefits with an effective date of January 29, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant did not refuse an offer of suitable work from Tri-State Nursing Enterprises, Inc. on March 15, 2016 or April 1, 2016. In this case, the offer was made by telephone call and a message was left for the claimant. A bona fide offer of work was not made to the claimant, either by personal contact or by registered letter as the law requires. A message left on an answering machine does not meet the legal requirements of personal contact as required by the Iowa Administrative Code.

Both the offers that were made on March 15, 2016 and April 1, 2016, were made when the claimant did not have a valid unemployment insurance claim and was not claiming unemployment insurance benefits. The administrative law judge does not have jurisdiction to evaluate the offers or refusals of work since the offers of employment took place outside of the claimant's benefit year. The claimant is not subject to a benefits disqualification for work refusals that took place while the person was not claiming unemployment insurance benefits.

DECISION:

The February 7, 2017, reference 02, decision is affirmed. The employer did not make a bona fide offer of work on April 1, 2016 and the offer of work was made outside the claimant's benefit year. The administrative law judge has no jurisdiction to determine the suitability of the offer made April 1, 2016. Benefits are allowed provided the claimant is otherwise eligible.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs