

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTI OLDHAM
Claimant

APPEAL NO. 17A-UI-09268-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SODEXO OPERATIONS LLC
Employer

OC: 06/25/17
Claimant: Appellant (4)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Patti Oldham filed a timely appeal from the September 5, 2017, reference 12, decision that disqualified her for benefits, based on the claims deputy's conclusion that Ms. Oldham refused an offer of suitable work from Sodexo Operations, L.L.C. on July 1, 2017. After due notice was issued, a hearing was held on September 27, 2017. Ms. Oldham participated in the hearing. Rachelle Tyner, Benefits Administrator, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-09269-JTT. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO.

ISSUE:

Whether Ms. Oldham refused an offer of suitable work from Sedexo Operations L.L.C. without good cause on or about July 1, 2017

Whether Ms. Oldham has been able to work and available for work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Patti Oldham established a claim for unemployment insurance benefits in response to a June 30, 2017 layoff from her full-time employment with William Penn University. Ms. Oldham had worked for William Penn as a full-time housekeeper from 2014. Ms. Oldham's final wage from the employment was \$10.20 per hour. Ms. Oldham's work hours during the last three or four months of the employment were 2:30 a.m. to 11:00 a.m., Monday through Friday. Ms. Oldham's layoff occurred in connection with William Penn University's decision to contract with a third party, Sedexo Operations, L.L.C., for housekeeping service. William Penn University is the sole base period employer in connection with Ms. Oldham's unemployment insurance claim. Ms. Oldham's highest earnings base period quarter was the first quarter of 2016. Ms. Oldham's average weekly wages for that quarter was \$421.47.

In June 2017, before Ms. Oldham established her unemployment insurance claim, a Sedexo representative invited Ms. Oldham and other William Penn University housekeepers to apply for

work with Sedexo. The invitation to apply did not mean that Ms. Oldham would be offered employment with Sedexo. Ms. Oldham decided against applying for work with Sedexo due to the substantial increased health insurance expense such employment would involve. Sedexo never offered Ms. Oldham employment.

After Ms. Oldham established the original claim for benefits that was effective June 25, 2017, she spoke to a Workforce Development representative and was advised that due to her receipt of Paid Time Off (PTO) in connection with her separation from William Penn University, it would be best to defer her weekly claims for unemployment insurance benefits until the week that started July 16, 2017. On July 17, 2017, Ms. Oldham spoke with a Workforce Development representative. At that time, Ms. Oldham provided an agency representative with weekly claim information for the weeks that ended July 1, 8 and 15, 2017. For each of the first two weeks, Mr. Oldham reported \$480.00 in vacation pay benefits, which exceeded her \$249.00 weekly unemployment insurance benefit amount by more than \$15.00. For the week that ended July 15, 2017, Ms. Oldham reported zero wages. Ms. Oldham did not seek new employment during the three-week period of June 25, 2017 through July 15, 2017. Workforce Development records reflect that no benefits were paid to Ms. Oldham for those three weeks.

Ms. Oldham subsequently made weekly benefit claims for the six consecutive weeks between July 16, 2017 and August 26, 2017. For each of those weeks, Ms. Oldham reported zero wages and two job contacts. Ms. Oldham had indeed applied for two jobs during each of those weeks. For each of those weeks, Workforce Development disbursed \$249.00 in benefits to Ms. Oldham.

Ms. Oldham subsequently made weekly benefit claims for the four consecutive benefit weeks between August 27, 2017 and September 23, 2017. For each of those weeks, Ms. Oldham reported zero wages and two job contacts. Ms. Oldham had indeed applied for two jobs each of those weeks. Workforce Development has thus far not disbursed any benefits to Ms. Oldham for the four weeks between August 27, 2017 and September 23, 2017.

Since Ms. Oldham established her original claim benefits she had had no health issues that prevent her from performing full-time work. Since Ms. Oldham established the original claim, she had not needed to provide care to a spouse that would impact on her availability for full-time work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.24(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.

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(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

- a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.
- b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The evidence in the record fails to establish a refusal of suitable work. Sedexo never offered employment to Ms. Oldham. The interaction with Sedexo, including the invitation to apply and the decision not to apply, pre-dated Ms. Oldman's unemployment insurance claim. There is no basis for disqualifying Ms. Oldman for unemployment insurance benefits due to a purported refusal of suitable work. Ms. Oldham is eligible for benefits, provided she meets all other eligibility requirements.

Iowa Code section 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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

The evidence in the record establishes that Ms. Oldham was not available for work within the meaning of the law during the three-week period of June 25, 2017 through July 15, 2017. Until June 30, 2017, Ms. Oldham was still attached to the full-time employment with William Penn University. During the three-week period of June 25, 2017 through July 15, 2017, Ms. Oldham did not look for new employment. Ms. Oldham is not eligible for benefits for the three-week period of June 25, 2017 through July 15, 2017.

The evidence in the record establishes that Ms. Oldham has been able to work and available for full-time work since July 16, 2017. She has continued to be available for full-time employment up to the present. Ms. Oldham is eligible for benefits, provided she meets all other eligibility requirements. Ms. Oldham should be careful not to unduly restrict her search for new employment to avoid the risk of being disqualified for benefits in the future for failure to make an active and earnest search for new employment.

DECISION:

The September 5, 2017, reference 12, decision is modified as follows. The claimant did not refuse an offer of suitable employment. The claimant did not fail to apply for suitable employment at any time during her claim year. No disqualification will enter based on the purported refusal to accept suitable employment. The claimant was not available for work within the meaning of the law during the three-week period of June 25, 2017 through July 15, 2017 and is not eligible for benefits for those three weeks. The claimant has been able to work and available for work since September 16, 2017. The claimant is eligible for benefits for the period beginning September 16, 2017, provided she meets all other eligibility requirements. The claimant continued to meet the able and available requirements at the time of the September 27, 2017 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs