

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M ROBICHEAU
Claimant

APPEAL NO. 16A-UI-11829-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE SALVATION ARMY
Employer

OC: 04/17/16
Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal
871 IAC 24.24(14)(b) – Suitable Work

STATEMENT OF THE CASE:

Linda Robicheau, the claimant, filed a timely appeal from a representative's decision dated October 17, 2016, reference 07, which denied benefits finding that on October 16, 2016, the claimant refused to accept an offer of suitable work with the Salvation Army finding that the work was considered suitable since it was offered in the 6th to 12th week since the claimant had filed a recent or additional claim and that the gross weekly wage at least equaled 75 percent of the claimant's average weekly wage paid during the highest quarter of her base period. After due notice was provided, a hearing was held in Council Bluffs, Iowa on December 7, 2016. Claimant participated. Participating as a witness and as a representative was the claimant's husband, Tim Robicheau. Claimant's Exhibits 1 and 2 were admitted into the hearing record. The employer indicated they would not participate in the unemployment hearing.

ISSUE:

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

FINDINGS OF FACT:

The Salvation Army made an offer of work to the claimant on August 16, 2016. That offer included hourly pay at the rate of \$18.50 per hour and was categorized as "full time employment" by the employer. Based upon the limited information that had been provided to the claimant, she responded with a letter tentatively accepting the offer of work.

The claimant then attended a meeting with the employer and at that time received additional information about the employer and the job position that was being offered to Ms. Robicheau. Based upon the information at the meeting, the claimant concluded that she would be employed only at a maximum of 35 hours per week at \$18.50 per hour. Claimant was also informed that insurance benefits would not be provided until 90 days after she had begun employment and that she would be eligible only for two accrued vacation days from the time that she was to begin employment on August 30, 2016 until the end of the 2017 year. Claimant was also informed that any future increases in pay would be contingent upon future receipts of "Red

Kettle Drives” and that those contributions were used first to support the organization and its Corps And secondly, to pay staff and other expenses and that the remainder was earmarked for charitable purposes. The claimant had a strong philosophical disagreement with the manner in which the organization used its charitable donations.

After considering the additional information that had been made available to her, Ms. Robicheau declined the offer of work. When the claimant computed the hourly pay based upon the maximum number of hours of work available to her each week, she also concluded that the amount offered was less than 75 percent of her average weekly wage that had been paid to her during her highest quarter in her base period.

REASONING AND CONCLUSIONS OF LAW:

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

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. (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.

Based upon the evidence in the record, the administrative law judge concludes that the offer was unsuitable as it did not meet the minimum wage requirement set out for an offer to be considered suitable. The administrative law judge also concludes that the claimant did have additional good cause reasons for the refusal. The claimant had initially been unaware that insurance benefits would be delayed and was not aware that the number of vacation days accrued each year would be substantially less than generally offered by other employers.

DECISION:

The October 17, 2016, reference 07, decision is reversed. The claimant did not refuse an offer of suitable work. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs