

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**AMBER J TAYLOR**

Claimant

and

**KASTIM CORPORATION**

Employer

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**HEARING NUMBER: 21B-UI-00764**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A, 96.5-1**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** and **REMANDS** as set forth below.

**FINDINGS OF FACT:**

The administrative law judge's Findings of Fact are adopted by the Board as its own.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Here the Claimant knew that she would no longer be working for this Employer after September 5, 2020. She quit early. We agree with the Administrative Law Judge that this reason for a quit is not good cause attributable to the Employer. 871 IAC 24.25(19). The Claimant thus would be properly denied benefits through the week ending September 5, 2020. Benefits may be allowed after this week, however.

When a Claimant quits early in reaction to an announced layoff, and that quit is disqualifying, then benefits are not allowed during the interim period of unemployment. But they *are allowed* after the period when the employment would have ended anyway. The effect of a precipitous quit is only that benefits are denied for the period of unemployment *caused by the quit*. The regulations are explicit:

Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff.

**Benefits shall not be denied from the effective date of the scheduled layoff.**

871 IAC 24.25(40) (emphasis added). Applying these principles here the Claimant quit in advance of an announced scheduled end of the employment. That end of the employment would not be disqualifying, but the quit would be. Thus the Claimant is disqualified but only until the contract would have terminated anyway, that is, she is disqualified only for the week ending September 5, 2020.

Here a transfer was offered before the job loss, but during the Claimant's benefit year, and the Claimant refused it. Since the offer was within the claim year, this raises the issue of refusal of suitable work. We set out, for the benefit of the parties and counsel, some of the basics on refusal of work.

The applicable regulation is 871 IAC 24.24. In general, where the claimant actually refuses work, as opposed to not applying for work, the refusal of suitable work question involves whether the work was "suitable" and, if so, whether the refusal was for "good cause". In *Pohlman v. Ertl Co.*, 374 N.W.2d 253 (Iowa 1985) the Supreme Court placed the burden of proof on good cause on the claimant. Subsequently in *Norland v. Iowa Department of Job Service*, 412 N.W.2d 904, 910 (Iowa 1987) the Court ruled that the employer had the burden of proving suitability of the offer. On the issue of suitability, the Employer has a burden of putting on a *prima facie* case. The Claimant then has a burden to identify the suitability factors at issue, at least as to some of them. *Norland v. IDJS*, 412 N.W.2d 904, 911 (Iowa 1987). On the statutorily specified minimum wages, the employer has the initial burden regardless of the reason for refusal. "In order for work to be considered 'suitable' under section 96.5(3), it is mandatory that the gross weekly wages equal or exceed the statutorily prescribed percentages of base period wages. If gross weekly wages for the work do not equal or exceed those sums, the work is unsuitable as a matter of law and the actual motive of a claimant in refusing the work is immaterial." *Biltmore Enterprises, Inc. v. Iowa Dept. of Job Service*, 334 N.W.2d 284, 287 (Iowa, 1983). If the employer proves that a suitable offer was made and refused, then the claimant can avoid disqualification by showing that the refusal was for good cause. Suitability of an offer is a fact issue that must be resolved "in light of those facts peculiar to each given case." *Norland v. IDJS*, 412 N.W.2d 904, 912 (Iowa 1987). "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). "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." 871 IAC 24.24(4). Distance to the job site can also be good cause for refusing otherwise suitable work. 871 IAC 24.24(7) & (10). Notably in a refusal of suitable work case the good cause for refusal need not be attributable to the employer, a fact that follows from the fact that the statute uses "good cause attributable to the individual's employer," in the quit provision in Iowa Code §96.5(1), but only "failed, without good cause, ... to accept suitable work when offered" in the refusal of work provision two subsections later. Iowa Code §96.5(3).

We also note that there is evidence that the Claimant was receiving Workers' Compensation payments during the claim year. This raises two more issues. First, certain Workers' Compensation benefits must offset unemployment compensation for every week received. Iowa Code §96.5(5)(a)(2); Iowa Code §96.5(5)(b). Second, the fact of an injury that may have caused some level of industrial disability raises the question of ability to work. *E.g.* 871 IAC 24.23(34)-(35); *see generally Rodda v. Vermeer, Inc.*, 734 N.W.2d 480 (Iowa 2007). We will remand on these issues as well.

The issues of refusal of suitable work, possible benefit offset by Workers' Compensation benefits received while on active claim status, and being able and available for work are remanded to the Benefits Bureau to address.

**DECISION:**

The administrative law judge's decision dated February 23, 2021 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not separated from employment in a manner that would disqualify the Claimant from benefits for any week other than the week ending September 5, 2020. Accordingly, the Claimant is allowed benefits after that date provided the Claimant is otherwise eligible. The overpayment of \$5,900 is reduced to \$202 which is the amount collected during the week ending September 5. Since FPUC was not payable for that week there is no overpayment of this federal benefit. Additional overpayments may be reinstated depending on the outcome of the remands.

The issues of refusal of suitable work during the claim year, possible benefit offset by Workers' Compensation benefits received while on active claim status, and being able and available for work **are remanded** to Iowa Workforce, Benefits Bureau. In the meantime benefits are allowed.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn