

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOYCE JOHNSON
Claimant

KELLY SERVICES INC
Employer

APPEAL 19A-UI-02107-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/13/19
Claimant: Respondent (1R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 28, 2019, (reference 08) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 4, 2019. Claimant participated. Employer participated through commercial recruiter Stacey Mumm. Official notice was taken of the administrative record.

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 22, 2019, employer offered a temporary customer service position with ACT to claimant, contingent upon successfully passing a background check. Claimant stated she was interested in the position. Employer conducted a background check.

On February 7, 2019, employer learned claimant did not pass the background check due to a 2014 theft charge. On February 15, 2019, employer sent a letter to claimant stating she was no longer eligible for any assignments with employer due to her failure to disclose the charge in the application she completed for employer in September 2018.

The Benefits Bureau of Iowa Workforce Development has not issued an initial decision on whether claimant's separation from employment disqualifies her from receiving unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer did not make an offer of work to claimant.

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.

Here, no firm offer of work was actually made to claimant as the offer was contingent on passing a pre-employment background check. Claimant was unable to meet that condition, so the offer was withdrawn. Claimant did not refuse the offer of work.

It appears claimant has been permanently separated from employment with employer. No initial determination has been made by the agency on this separation.

DECISION:

The February 28, 2019, (reference 08) decision is affirmed. Employer did not communicate a bona fide offer of work to claimant, and claimant did not refuse an offer of work. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

This matter is remanded for an initial determination on whether claimant's separation from employment with employer disqualifies her from receiving unemployment insurance benefits.

Christine A. Louis
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Decision Dated and Mailed

cal/scn