

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CONNIE L CAVIN
Claimant

IOWA STAFFING INC
Employer

APPEAL 17A-UI-04815-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/26/17
Claimant: Respondent (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work/Work Refusal
871 IAC 24.24(14)(b) – Suitable Work

STATEMENT OF THE CASE:

The employer filed an appeal from the May 8, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2017. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Alejandra Rocha, office manager. Employer Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

The issue is whether the claimant refused a suitable offer of work on March 30, 2017.

FINDINGS OF FACT:

The claimant previously worked for the employer as a packer, earning \$11 per hour, from June 2016 to March 24, 2017, at Henry Shine, when the assignment ended. At the time the assignment ended, the claimant was made aware that an offer of work at Mid-American Logistics was forthcoming.

The employer made an offer of work to the claimant March 29, 2017, during a personal phone call with the claimant and Ms. Rocha. That offer included the following terms: A full-time position, as a packer, working first shift beginning March 30, 2017, earning \$9.00 per hour for 40 hours per week. The claimant had previously worked as a packer and the same hours.

On March 29, 2017, the claimant went to the employer's office, returned her prior work badge and accepted the offer of work. She signed the orientation page at the employer's office. She had indicated she was available to work. Then the claimant notified the employer she could not begin the assignment on March 30, 2017, because she had a scheduled doctor's appointment.

The claimant was offered a second assignment, under the same terms, with a start date of March 31, 2017. The claimant declined the offer stating she had to go out of town to pick up her grandchild. The claimant did not respond to the employer's attempts to contact her to pick a new start date (See Employer Exhibit 1), and the employer even stopped by the claimant's home on April 12, 2017, and left a note stating they were trying to reach her. On April 17, 2017, the claimant notified the employer she had been out of town with "family things."

The claimant's average weekly wage is \$323.40. The offer was made in the first week of unemployment. Consequently, the wage offered must equal or exceed 100 percent of her average weekly wage. The wage offered in this case was \$9 per hour or \$360.00 per week, thus meeting the wage requirement. The claimant did not attend the hearing to rebut the employer's testimony and evidence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did refuse a suitable offer of 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:
 - b.
 - (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(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 offer was suitable as it met the wage requirements, offered hours and position the claimant previously stated she was available to work, (and even signed an orientation form to begin) and the claimant did not have a good-cause reason for the refusal. Therefore, benefits are denied.

DECISION:

The May 8, 2017 (reference 02), decision is reversed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND: The issue of whether the claimant was overpaid benefits is delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn