

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SINCEARAE DORAN
Claimant

B&G FOODS NORTH AMERICA INC
Employer

APPEAL 22A-UI-05839-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/19/21
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)a – Failure to Apply for or Accept Suitable Offer of Work

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the February 28, 2022 (reference 04) unemployment insurance decision that found claimant was not disqualified from receipt of benefits because she had good cause to refuse an offer of employment. The parties were properly notified of the hearing. A telephone hearing was held on April 15, 2022. The claimant did not participate. The employer participated through witness Wanda Kellogg. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant able to and available for work?
Did the claimant fail to apply for or accept a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits effective December 19, 2021. On December 14, 2021, the employer offered claimant employment as a full-time line foreperson. The starting wage was \$22.80 per hour with an additional \$0.55 per hour shift differential. The position was for 40 hours per week. Claimant accepted the offer and began completing paperwork for the position. Claimant had been employed for this type of manufacturing work in the past at employer TPI.

Claimant was scheduled to begin employment on January 4, 2022; however, she notified the employer that she was ill and another person in her household was ill, therefore, she was unable to begin work on January 4, 2022. On December 27, 2021, the employer mailed her an offer letter for the same position again. Claimant's start date was pushed back to January 17, 2022. Claimant notified the employer that she remained ill and was unable to start work. Claimant's start date was again pushed back to January 31, 2022. On January 26, 2022, the employer attempted to contact the claimant via telephone but claimant hung up on it and then

blocked the employer from calling her number. Claimant never began actual employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). **Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work** and not unemployed for failing to bump a fellow employee with less seniority. **If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work.** In such a case it is the availability of the claimant that is to be tested. 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. However, the claimant's availability would be the issue to be determined in these types of cases.

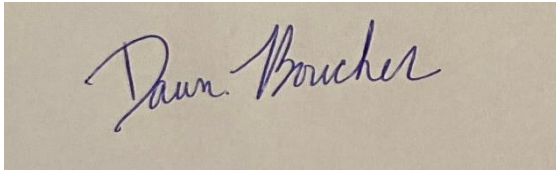
(emphasis added).

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2). In this case, the reason for the claimant's failure to accept the work was because the claimant was not able to or available for work due to illness. The claimant also failed to establish that she was able to and available for work prior to

her January 4, 2022 start date. Therefore, the claimant is not disqualified for refusing an offer of work, but is not eligible for regular unemployment insurance benefits funded by the State of Iowa for the period of time that she has been unable to and unavailable for work. Regular unemployment insurance benefits are denied effective December 19, 2021 and continuing due to the claimant failing to establish that she was able to and available for work.

DECISION:

The February 28, 2022 (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to and available for work effective December 19, 2021. No disqualification based upon a refusal of offer of work is imposed, rather, regular unemployment insurance benefits funded by the State of Iowa are denied effective December 19, 2021 and continuing until such time as the claimant establishes she is able to and available for work.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

db/db