

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SKYLER LAMB**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 18A-UI-04302-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/11/18**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 6, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a work offer issue. The parties were properly notified about the hearing. A telephone hearing was held on May 1, 2018. Claimant participated with his parents Angie and Mike Lamb. Employer participated through risk manager Melissa Lewien. Employer's Exhibits 1 through 3 were received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

**ISSUES:**

Is the claimant able to work and available for work effective March 11, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time laborer/warehouse worker assigned at Pioneer in Toledo, Iowa. The separation date was March 9, 2018, when the assignment ended for the season. He went on vacation and did not check back for more work. He received phone messages from Whitney Kingery on March 23, along with other messages about available assignments at the Jeldwen client. (Employer's Exhibit 2) He did not return the calls or otherwise communicate with ASI to notify them of his intentions. (Employer's Exhibit 2A) He is a part-time online college student and has decided to focus on his studies and not seek work until the semester ends on May 25, 2018. He anticipates completing his education in May 2019. He is awaiting for recall to the Pioneer assignment for the summer break. ASI offers no guarantee of being able to return to the same assignment. Throughout the claim process, claimant recalled being on vacation during three different date ranges: March 11 through 17, then March 23 to 27, and at hearing March 28 through April 2, 2018. He claimed benefits for the two weeks-ending March 24, 2018, and stopped making weekly continued claims after that to focus on school.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that no offer of work was directly communicated to claimant, but he is not able to work and available for work effective March 11, 2008.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.24 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.

**(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.

**(12) *Claimant discourages prospective employers.*** When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant shall be deemed to have refused suitable work as contemplated by the statute.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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:

**Benefit 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23 provides:

**Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Because the employer left messages, but did not directly communicate an offer of work to claimant, he did not refuse an offer of work. However, given the three date changes in claimant's recollection of being on vacation, his testimony in that regard is not reliable. Since claimant was on vacation and limited himself to returning to the ASI Pioneer assignment during summer break so he could focus on school, he has not established his ability to or availability for work. Accordingly, benefits are denied.

**DECISION:**

The April 6, 2018, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective March 11, 2018. Benefits are denied.

**REMAND:** The issues of the separation from the Pioneer assignment by ASI on March 9, 2018, and whether the claimant has been overpaid benefits of \$662.00, are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigations and determinations.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs