

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MUABON MORRIS
Claimant

APPEAL NO. 20A-UI-06767-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TACO JOHNS OF IOWA INC
Employer

OC: 04/12/20
Claimant: Respondent (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 17, 2020, reference 03, decision that allowed benefits, provided the claimant was otherwise eligible, based on the deputy's conclusion that no offer of employment was made on April 20, 2020. After due notice was issued, a hearing was held on July 29, 2020., Claimant Muabon Morris participated. Jennie Starr represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant refused an offer of suitable work on or about April 20, 2020 without good cause.

Whether the claimant has been able to work and available for work during the period of April 12, 2020 through July 21, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Muabon Morris established an original claim for benefits that was effective April 12, 2020. By the time of the July 29, 2020 appeal hearing, Ms. Morris had made weekly claims for the 15 consecutive weeks between April 12, 2020 and July 25, 2020. Iowa Workforce Development set Ms. Morris' weekly benefit amount for regular benefits at \$243.00 and commenced paying both regular benefits and \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) benefits. At that time Ms. Morris established her claim for benefits, she was employed by Taco Johns of Iowa, Inc. as a part-time crew member. Ms. Morris usually worked 18 to 20 hours per week. Mr. Morris's work hours were based on her limited availability, 10:00 a.m. to 3:00 p.m. Her weekly wage was \$10.00. Ms. Morris' regular duties involved operating a cash register, working in the drive-through, and cleaning the lobby. Jennie Starr, General Manager, was Ms. Morris' immediate supervisor. On March 16, 2020, the employer closed its lobby for dine-in service, in response to the Governor's State Public Health Emergency Declaration in which the Governor directed all restaurants within the state to close for dine in service. The employer kept its drive-through window open. The employer experienced an increase in sales. The employer

did not layoff any employees and did not reduce work hours for any employees. The employer did not layoff Ms. Morris or reduce her work hours. April 13, 2020, Ms. Morris was assigned to work from 11:00 a.m. to 2:00 p.m. On that day, Ms. Morris told Ms. Starr that she was pregnant and that it was unwise for her to continue working in light of the COVID-19 pandemic. Ms. Morris had not contracted COVID-19 nor been exposed to COVID-19. The employer concluded it could not compel Ms. Morris to work if she did not wish to work. At that point, Ms. Morris commenced an approved leave of absence. Ms. Morris cites morning sickness as the basis for her need to be off work. Ms. Morris had provided no medical documentation supporting her need to go off work.

Ms. Starr next attempted to contact Ms. Morris on May 15, 2020. Ms. Starr called Ms. Morris' telephone number and found that the number was disconnected. Ms. Starr made two more unsuccessful attempts to call Ms. Morris on May 16 and 17, 2020. Ms. Morris had disconnected her phone in April, despite receiving \$716.55 per week in combined net unemployment insurance benefits, which was well above her \$180.00 to \$200.00 gross weekly wages from the employment.

On May 27, 2020, the employer sent a letter to Ms. Morris indicating that other employees were back at work working their regular hours, that Ms. Morris was an active employee on a leave of absence, that the employer was not forcing employees to come back to work, but that if Ms. Starr did not hear from Ms. Morris by June 5, 2020, the employer would deem her to have voluntarily quit. On June 4, 2020, Ms. Morris called Ms. Starr and said she would not be returning to the employment. Ms. Morris did not provide a reason for her decision.

Ms. Morris advises that it is difficult for her to find employment in light of a criminal history. However, the employer had continued to have work for her throughout the period she was off work and continued to have work for her pursuant to the availability restrictions Ms. Morris had imposed.

REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses suitable work without good cause is disqualified for unemployment insurance benefits until the claimant works in and is paid for insured work equal to 10 times the claimant's weekly benefit amount. Iowa Code section 96.5(3).

Iowa Admin. Code r. 871-24.24(14)(a) 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 section 96.5(3)"b" are controlling in the determination of suitability of work.

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.

Iowa Code section 96.4(3) provides, in relevant part, as follows:

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".

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part, as follows:

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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce Development published on its website a list of Covid-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). Ms. Morris circumstances do not fall within any of those scenarios. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Ms. Morris has not been available for work within the meaning of the law since she established the original claim for benefits that was effective April 12, 2020. During the period of April 13, 2020 through June 4, 2020, Ms. Morris was on a voluntary leave of absence that she requested and that the employer approved. The employer continued to have work for Ms. Morris throughout the leave period. Ms. Morris disconnected her phone upon going off work in April 2020. Ms. Morris' assertion that she lacked funds to maintain phone service between April and June was not credible. Ms. Morris was able to maintain phone access while she was making \$180.00 to \$200.00 per week in the part-time employment. Ms. Morris' income significantly jumped when she went off work and commenced receiving unemployment insurance benefits. Based on Ms. Morris' voluntary lack of phone service, there was no contact between the employer and Ms. Morris on April 20, 2020. Ms. Morris continued to be voluntarily unemployed and out of contact with the employer until the day before the June 5, 2020 end date the employer reasonably set as an end point to the indefinite leave of absence.

Ms. Morris did not refuse *recall* to suitable work on June 4, 2020. There was no recall to refuse because the employer had never laid off Ms. Morris. However, on June 4, 2020, Ms. Morris did refuse to return to the employment at the end of the approved voluntary leave of absence. The work available at that point was the same work Ms. Morris had previously performed for the employer. Ms. Morris presented insufficient evidence to establish good cause for refusing to make herself available for work. Ms. Morris continued to be voluntarily unavailable for work after the June 4, 2020 refusal to return at the end of the voluntary leave of absence. Ms. Morris continued to be voluntarily unavailable for work through the benefit week that ended July 21, 2020, the last week for which she had made a weekly claim at the time of the appeal hearing. Ms. Morris presented insufficient evidence to prove a pregnancy-based reason for being off work. Even if the evidence had proven that Ms. Morris had a pregnancy-based reason to be off work, that by itself would cause her not to meet the able and available requirements.

Iowa Admin. Code r. 871-24.22(2)(j)(1)(2)(3) 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

In light of Ms. Morris' June 4, 2020 decision not to return to the employment at the end of the approved leave of absence, this matter is remanded to the Benefits Bureau for adjudication of the employment separation that occurred at that time.,

This matter is also remanded for entry of overpayment decisions regarding the regular benefits and Federal Pandemic Unemployment Compensation benefits Ms. Morris received for the period of April 12, 2020 through July 21, 2020.

DECISION:

The June 17, 2020, reference 03 decision is modified in favor of the employer/appellant as follows. There was no layoff and no refusal of suitable work within the meaning of the law. Rather, there was a voluntary leave of absence that commenced on April 13, 2020, followed by a refusal to return to the same employment at the end of the approved leave of absence. The claimant has not been available for work since she established the original claim for benefits that was effective April 12, 2020 and continued to be unavailable for work at the time of the July 29, 2020 appeal hearing. Benefits are denied effective April 12, 2020. The availability disqualification continued at the time of the July 29, 2020 appeal hearing.

In light of the claimant's June 4, 2020 decision not to return to the employment at the end of the approved leave of absence, this matter is remanded to the Benefits Bureau for adjudication of the employment separation that occurred at that time.

This matter is also remanded for entry of overpayment decisions regarding the regular benefits and Federal Pandemic Unemployment Compensation benefits the claimant received for the period of April 12, 2020 through July 21, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

September 2, 2020
Decision Dated and Mailed

jet/sam