

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLIN M RILEY
Claimant

BUNN-O-MATIC CORPORATION
Employer

APPEAL 21A-UI-14435-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (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 claimant/appellant filed an appeal from the June 15, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective June 19, 2020 as he failed to accept a suitable offer of work. The parties were properly notified of the hearing. A telephone hearing was held on August 19, 2021. The claimant participated personally. The employer participated through witness Christal Waddingham. Claimant's Exhibit A was admitted. 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 was employed full-time for this employer in the wiring department as a machinery maintenance worker. He began his employment on May 29, 2018. His last day physically worked on the job was March 23, 2020. On March 25, 2020 he was furloughed due to lack of production when the COVID-19 public health emergency occurred.

On or about June 19, 2020, the claimant was contacted by the employer to return to work at its Apton facility working on the production line. He would have received the same rate of pay. Apton was approximately an extra 15 miles further from his residence.

In April of 2020, the claimant received a letter from his medical provider stating that due to his underlying health conditions he had to take certain precautions regarding his employment and the COVID-19 public health emergency. See Exhibit A. Claimant was unable to work in his regular full-time machinery maintenance position due to his medical provider's recommendations and given his job duties. Claimant did not return to the employer due to his inability to work within his medical provider's restrictions during the COVID-19 pandemic.

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 § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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:

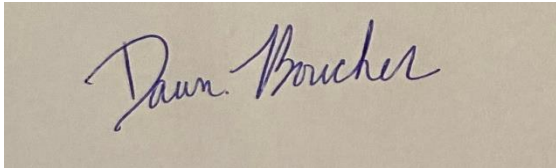
(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not 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 he is able to work and available for work within the meaning of the Iowa 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 his medical provider's restrictions. 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 he has been unavailable for work. Regular unemployment insurance benefits are denied effective June 19, 2020 and continuing due to the claimant not being able to and available for work.

DECISION:

The June 15, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant is not able to and available for work effective June 19, 2020 and continuing due to his medical provider's restrictions. 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 June 19, 2020 and continuing until such time as he establishes he is able to and available for work.

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

Dawn Boucher
Administrative Law Judge

August 24, 2021
Decision Dated and Mailed

db/mh

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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 you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA

benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.