

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GAIL L DERRY
Claimant

HIGHWAY MAIL COMPANY
Employer

APPEAL 19A-UI-02871-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/17/19
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – 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 March 28, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a temporary layoff. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2019. Claimant participated. Employer participated through owner Lee Moran.

ISSUES:

Is the claimant able to work and available for work effective March 17, 2019?
Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in April 1998. Claimant last worked as a full-time truck driver. Claimant was separated from employment on March 1, 2019, when he was laid off due to lack of work.

Employer is a trucking company that contracts with the United States Postal Service (USPS). The routes consist of round trips between Des Moines, Iowa and Sioux Falls, South Dakota.

For the past ten years, claimant drove a route that required him to leave Des Moines at 11:00 a.m. for four consecutive days. Claimant then had the next four days off of work. Employer paid claimant \$27.89 per hour.

On March 1, 2019, employer notified claimant that the USPS was cancelling the contract for the route leaving at 11:00 a.m. Employer assumed claimant was retiring and did not offer claimant other work.

During his employment, claimant kept a long-term stay hotel room in Des Moines as his home is a one-hour drive from Des Moines. Claimant gave up his hotel room in Des Moines after his route was cancelled, and is therefore not interested in any offers of temporary work from employer.

Claimant filed a claim for unemployment insurance benefits with an effective date of March 17, 2019.

On March 23, 2019, employer asked claimant to work one shift leaving Des Moines at 9:00 p.m. for \$27.89 per hour. Claimant stated he was not interested in the offer of work because it was temporary.

On March 27, 2019, employer asked claimant to fill in for an employee on medical leave on a route that left Des Moines at 2:30 a.m. for the same rate of pay. The route ran three days on, and three days off. Claimant declined the offer of work because of the schedule and the temporary nature of the offer.

Claimant is looking for driving work with a similar schedule to that which he had with employer during the previous ten years.

REASONING AND CONCLUSIONS OF LAW:

In order to be eligible for unemployment insurance benefits, claimant must first be able to establish he is able to and available for 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:

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. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Admin. Code r. 871-24.23(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

In this case, claimant is not available for work because he is restricting himself from work during hours in which suitable work is available. Claimant is also unwilling to take work located in Des Moines after giving up his hotel room. Des Moines is an area where claimant is expected to be available for work, given his many years of working in that area prior to his unemployment.

Claimant is unduly limiting his availability for work and therefore is not eligible for unemployment insurance benefits at this time.

DECISION:

The March 28, 2019, (reference 01) decision is reversed. Claimant declined an offer of work but was unavailable at the time. Benefits are withheld effective March 17, 2019, until such time as the claimant makes himself available for work.

Christine A. Louis
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Decision Dated and Mailed

cal/scn