

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BILLIE CROSS

Claimant

APPEAL 19A-UI-05032-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05/19/19

Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 14, 2019, (reference 06) unemployment insurance decision that denied benefits based upon her availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 18, 2019. Claimant participated. Employer participated through risk manager Melissa Lewien. Claimant's Exhibit A was received. Employer's Exhibits 1 through 4 were received.

ISSUES:

Did the claimant refuse a suitable offer of work?
Is the claimant able to work and available for work effective May 19, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary staffing firm. Claimant was last assigned to work at the Menards Distribution Center as a full-time fork lift operator in Shelby, Iowa, from March 25, 2019, until May 16, 2019, when the assignment ended.

Claimant did not have personal transportation when she began the assignment. Menards provided transportation for claimant to and from work. Claimant bought a car in April 2019, but was in a one-vehicle accident on April 28, 2019. As of the date of the hearing, the vehicle has not been repaired and is not drivable.

On May 16, 2019, claimant went into employer's office and informed employer that her assignment had ended. Employer told claimant there were positions open at a company in Red Oak, Iowa. Red Oak is a little over 30 miles away from Atlantic, Iowa, where claimant resides. Employer noted that the company did not provide transportation. Claimant stated she did not have a working personal vehicle and would not have transportation to Red Oak.

Claimant is available for work in Atlantic, Iowa, where she lives. Claimant is available for work outside of Atlantic, Iowa, only if the employer provides transportation.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

In this case, claimant's benefit year is effective May 19, 2019. The parties dispute whether employer actually made an offer of work to claimant. That dispute need not be decided

because even if an offer had been made, both parties agree it was on May 16, 2019, which is outside claimant's benefit year.

A second issue is whether claimant is considered able to and available for work due to her transportation situation.

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(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

In this case, claimant did not lose her means of transportation to the area of her usual employment, as she did not have a personal vehicle to begin with. Claimant was only able to take the assignment in Shelby, Iowa, because the Menards Distribution Center provided transportation. Claimant only had a personal vehicle for a very brief period of time. Effective May 19, 2019, claimant is still available for work in the area of her usual employment, which is in Atlantic, Iowa, and outside of Atlantic, Iowa if transportation is provided by the employer.

DECISION:

The June 14, 2019, (reference 06) unemployment insurance decision is reversed. The alleged offer of work was made outside of the benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Claimant is available for work effective May 19, 2019. Benefits are allowed, provided claimant is otherwise eligible.

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Decision Dated and Mailed

cal/scn