

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTOHER N KNIGHT**  
Claimant

**APPEAL 19A-UI-05286-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FISHER BUILDING SERVICES INC**  
Employer

**OC: 08/19/18  
Claimant: Respondent (4R)**

Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On July 2, 2019, Fisher Building Services, Inc. (employer) filed an appeal from the June 26, 2019, reference 05, unemployment insurance decision that allowed benefits effective March 30, 2019 based on the determination Christoher N. Knight (claimant) refused work as he was employed elsewhere. After due notice was issued, a telephone conference hearing was held on July 26, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Controller Ed Fisher. No exhibits were offered into the record. The administrative law judge took official notice of the claimant's claim history.

**ISSUES:**

Was a suitable offer of work made to the claimant?  
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective August 19, 2018. The claimant's average weekly wage from the high quarter of his base period is \$391.22. The claimant received benefits from the week of August 18, 2018 through the week ending October 6. He reactivated his claim for benefits effective January 20, 2019. He filed for and received unemployment insurance benefits each week from January 20 through the week-ending May 4.

The employer made an offer of work to the claimant via telephone on March 25. That offer included the following terms: \$12.00 an hour for 40 hours per work working first shift as a Window Cleaner. The offer was made in the after the 16th week of unemployment. The claimant declined the offer stating he had accepted an offer of work with a previous employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant declined an offer of work because he was not available for work. Benefits are denied effective March 24, 2019.

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(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(20) provides:

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

(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.

The offer may have been suitable, but the reason for the failure to accept the work was because the claimant was not available for work. The claimant refused the offer of work as he had accepted employment with another employer; however, he continued to report he was unemployed through the week ending May 4, 2019. Therefore, the claimant is not disqualified from receiving benefits due to refusing a suitable offer of work, but he is not eligible for benefits effective March 24, 2019 because he was waiting to go to work for a specific employer and was unavailable for work. Benefits are denied effective March 24, 2019.

The issue of whether the claimant has been overpaid unemployment insurance benefits consistent with this decision is remanded to the Benefits Bureau of Iowa Workforce Development (IWD) for an initial investigation and determination.

**DECISION:**

The June 26, 2019, reference 05, decision is modified in favor of the appellant. The claimant declined an offer of work but was unavailable at the time. Benefits are denied effective March 24, 2019.

**REMAND:**

The issue of whether the claimant has been overpaid unemployment insurance benefits consistent with this decision is remanded to the Benefits Bureau of Iowa Workforce Development (IWD) for an initial investigation and determination.

---

Stephanie R. Callahan  
Administrative Law Judge

---

Decision Dated and Mailed

src/rvs