

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DESHAUN SMITH
Claimant

WILBUR AUTO BODY SALES INC
Employer

APPEAL 21A-UI-16087-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
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:

The employer/appellant, Wilbur Auto Body & Sales Inc., filed an appeal from the July 14, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 10, 2021. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Mathew Gibbon.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to work and available for work effective May 4, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his claim for unemployment insurance benefits with an effective date of March 28, 2021.

Claimant began employment in fall 2019 as an auto dismantler, earning \$10.00 per hour, working full-time at 40 hours per week. Employer temporarily laid claimant off on April 1, 2020 due to the COVID-19 pandemic impacting business.

Employer attempted to contact claimant May 1, 2, and 4, 2020 about returning to work as the employer was reopening. Employer sent text messages and left voicemail for claimant, who

was unresponsive. Employer stated claimant did not return to work and appears to be self-employed. Claimant did not attend the hearing to present evidence about why he did not return to work upon recall and whether he has been able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits effective May 4, 2020

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.24(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)

Iowa Admin. Code r. 871-24.23(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Iowa Admin. Code r. 871-24.23(7) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

Employer in this case had work available to claimant effective May 4, 2020. Employer made multiple attempts to contact claimant via text message and phone to recall him back to work. Claimant did not respond to employer's attempts to recall him to work, and never returned to work for this employer after the April 1, 2020 layoff.

For an unemployed individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Claimant in this case did not participate in the hearing or establish that he has been able and available for work since May 4, 2020.

Therefore, based on the evidence presented, the administrative law judge concludes the claimant was not able to and available for work because she was unwilling to work during hours in which work was available. Regular state unemployment insurance benefits are denied effective May 4, 2020.

The issues of claimant's permanent separation/requalification and whether claimant has been overpaid any benefits are remanded to the Benefits Bureau for an initial investigation.

DECISION:

The July 14, 2021, (reference 03) unemployment insurance decision is modified in favor of the employer/appellant.

The claimant is not available for insured work effective July 14, 2021, and regular, state-funded unemployment insurance benefits are denied. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND: The issues of claimant's permanent separation/requalification and whether claimant has been overpaid any benefits are remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
Administrative Law Judge

September 23, 2021
Decision Dated and Mailed

jlb/ol