

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

NATHAN W ELLIS

Claimant

APPEAL NO. 19A-UI-00897-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA READY MIX INC

Employer

OC: 12/16/18

Claimant: Appellant (2R)

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Nathan Ellis (claimant) appealed a representative's January 24, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with Central Iowa Ready Mix (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 15, 2019. The claimant participated personally. The employer participated by Keith Kuennen, General Manager.

ISSUE:

The issue is whether the claimant refused suitable work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 22, 2014, to December 20, 2018, as a full-time seasonal ready mix truck driver. The employer informed the claimant of his next scheduled job assignment by sending him a text through a scheduling system known as "Track It". In November 2018, the general manager talked to the claimant about laying him off.

After December 20, 2018, the claimant received no "Track It" scheduling texts from the employer. He assumed he had been laid off. The claimant filed a new claim for unemployment insurance benefits with an effective date of December 16, 2018. A dispatcher told the general manager that "Track It" texts were sent to the claimant and he did not respond. The general manager assumed the claimant had quit work. On January 2, 2019, the claimant discovered he was unemployed when he received a letter about his health insurance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not refuse an offer of suitable work.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The employer did not provide documentation or first-hand testimony at the hearing. Therefore, it did not provide sufficient evidence of an offer of work to rebut the claimant's denial of said offer. There was no evidence of any restriction or limitation on employability. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's January 24, 2019, decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs