

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIELLE M SAMPSON**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 21A-UI-16414-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/11/21**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) - Able and Available  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

On July 26, 2021, Danielle Sampson (claimant/appellant) filed an appeal from the decision dated July 16, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she refused recall to suitable work on April 3, 2020.

After due notice was issued, a telephone conference hearing was held on September 16, 2021. Claimant participated personally. Advance Services Inc (employer/respondent) participated by Risk Management Melissa Lewien. Regional Manager Kim Sistko participated as a witness for employer.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Did the claimant refuse to accept an offer of suitable work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer in April 2019. She was employed as an HR Coordinator. The last day claimant performed work was April 3, 2020. She was laid off at that time due to a lack of work caused by the pandemic. Claimant was recalled to work beginning May 26, 2020. Claimant did not return to work at that time due to a lack of childcare. Claimant made only limited efforts to secure childcare and search for other work after that time. She has not been employed elsewhere since. She determined to instead start her own business. In the current claim year claimant filed a weekly claim for benefits from the week ending April 17, 2021 through the benefit week ending July 31, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the decision dated July 16, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she refused recall to suitable work on April 3, 2020 is MODIFIED in favor of claimant.

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 Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

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.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, the claimant is not disqualified from receiving benefits, but is not eligible for benefits during the weeks filed.

**DECISION:**

The decision dated July 16, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she refused recall to suitable work on April 3, 2020 is MODIFIED in favor of claimant. Claimant is not disqualified from benefits due to a refusal to accept work but is ineligible for benefits during the weeks filed. Benefits are therefore denied.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 23, 2021  
Decision Dated and Mailed

abd/mh

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.