

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUDITH L DANNEMAN**  
Claimant

**KARDES INC**  
Employer

**APPEAL 20A-UI-10387-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (5R)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the August 26, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2020. The claimant participated. The employer participated through Dean Cox.

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:**

Whether the claimant has been able to work and available for work effective June 1, 2020?  
Whether the claimant refused an offer of suitable work without good cause ?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for unemployment insurance benefits with an effective date of March 15, 2020.

The claimant worked for this employer for approximately five years until March 17, 2020. She was a part-time cashier, working approximately 25-35 hours per week. From March 17, 2020 through May 31, 2020, claimant was furloughed by the employer. On approximately May 26, 2020, employer sent claimant a letter of recall to work. Employer offered claimant her same position, at the same hours and wages, with a return to work date of June 1, 2020.

Based upon claimant’s age and health, claimant, with her family, decided it was best for her not to return to work and claimant declined the offer. The claimant permanently separated from employment on June 1, 2020. The issue of the claimant’s permanent separation from employment has not yet been addressed by the Benefits Bureau.

## REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses recall to suitable employment without good cause is disqualified for unemployment insurance benefits until the claimant works in and is paid wages for insured work equal to 10 times the claimant's weekly benefit amount. Iowa Code section 96.5(3)(a). The work in question was suitable. The employer was merely recalling claimant to the same work under the same conditions that had been in place prior to the temporary layoff.

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. 871-24.23(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. 871-24.24(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.

For an unemployed individual to be eligible to receive benefits, she 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 she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-

24.22. In this case, claimant has limited her availability for work due to personal health concerns. The administrative law judge is sympathetic to the claimant, but based upon the evidence presented, concludes that the claimant is not able to and available for work effective June 1, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

The claimant's permanent separation from employment effective June 1, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.

*Note to Claimant:* This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.* If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at

<https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The unemployment insurance decision dated August 26, 2020, (reference 01) is modified with no change in effect. The claimant is not able and available for work effective June 1, 2020. 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 claimant's permanent separation from employment effective June 1, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.



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October 16, 2020  
Decision Dated and Mailed

jlb/scn