

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHANE FARRELL**  
Claimant

**DES STAFFING SERVICES INC**  
Employer

**APPEAL 21A-UI-02934-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/25/19**  
**Claimant: Respondent (1)**

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Section 96.5-3-a – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Des Staffing Services Inc (employer) appealed a representative's January 6, 2021, decision (reference 05) that concluded Shane Farrell (claimant) was eligible to receive unemployment insurance benefits because the work offered did not provide wages of at least 100 percent of his average weekly wage. A hearing was held on March 12, 2021. The claimant did not participate. The employer participated through Vice President of Operations Brian Moussalli and Assistant Operations Manager Carrie Boswell. The administrative law judge took official notice of the agency records. Exhibit 1 was admitted into the record.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable 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 was hired on February 11, 2020. He worked in various roles on several assignments until most recently as a full-time packer at Dairy Concepts. The claimant's hourly wage at this assignment was \$15.67. The claimant's immediate supervisor was Production Manager Josh Nelson. He averaged 49 hours per week at this assignment.

The claimant's average wage was \$350.77.

On March 20, 2020, the employer extended offers to the claimant at two different assignments, Hy-Vee and Osceola Foods. These offers are described in greater detail because the claimant did not have an active claim for benefits at the time as described below. (Exhibit 1)

The claimant opened a claim for benefits on August 25, 2019. He reopened this claim on March 29, 2020. Prior to reopening his claim, the claimant did not have an active claim for benefits on file.

## REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant's refusal of the offers extended by the employer is moot because he did not have an active claim for benefits until nine days later.

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(8) provides:

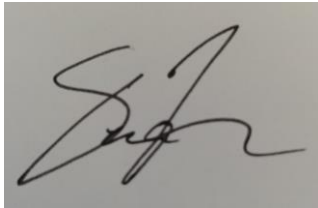
(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit

year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The offer of work was made by the employer to the claimant on March 20, 2020. The claimant filed a claim for benefits on March 29, 2020. The claimant refused work before he had a claim for unemployment insurance benefits on file. If there is no valid claim for unemployment insurance benefits on file, there can be no disqualification if work is refused. The claimant is qualified to receive benefits provided he is otherwise eligible.

**DECISION:**

The representative's January 6, 2021, decision (reference 05) is affirmed. The claimant is qualified to receive benefits provided the claimant is otherwise eligible.



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Sean M. Nelson  
Administrative Law Judge  
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Des Moines, Iowa 50319-0209  
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March 15, 2021  
Decision Dated and Mailed

smn/mh