

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERMAINE J ROBINSON
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-10567-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (4/R)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work
871 IAC 24.24(15)i – Suitable Work

STATEMENT OF THE CASE:

Jermaine Robinson (claimant) appealed a representative's August 26, 2020, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was not willing to work the number of hours required in his occupation with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 16, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

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 was hired on April 6, 2020 as a part-time hickory clerk working twenty-five to thirty hours per week. As time went on, the employer had too many employees and reduced the claimant's hours to twelve to twenty hours per week. The employer always notified the claimant of his hours by a schedule application that the claimant loaded on his cellphone.

The claimant had non-work related back surgery on May 26, 2020. He requested and the employer granted him time off for the surgery. On July 22, 2020, his doctor gave him a note allowing him to return to work with no restrictions. He provided the note to the employer and the employer said it would try to put him on the schedule. The claimant watched the scheduling

application on his cellphone and awaited a call. The employer did not schedule him on the app and did not call him.

The claimant made contact with the employer again. The employer said it would see what it could do. The employer did not put the claimant on the schedule. The claimant contacted the employer a third time. The employer told the claimant he was no longer employed. It said the claimant did not appear for scheduled work. The claimant was not scheduled on the application and no one notified the claimant of a shift.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1), (10), and (26) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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). For the two-week period ending May 23, 2020, the claimant testified he was at all times employed and earning wages from the employer. He cannot be considered totally or temporarily unemployed during those two weeks. The issue becomes whether he was partially unemployment insurance benefits. For a worker to be partially unemployed, he must be earning less than his WBA plus \$15.00. The claimant reported earnings of \$300.00 for the week ending May 16, 2020. He failed to report his \$300.00 earnings for the week ending May 23, 2020. \$300.00 is greater than \$112.00, his WBA plus \$15.00. The claimant was not partially unemployed. He was not monetarily eligible for unemployment insurance benefits. Benefits are denied for the two-week period ending May 23, 2020.

When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence for his surgery and recovery. The employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits for the benefit weeks from May 24, 2020, through July 19, 2020. Benefits are allowed as of July 19, 2020, provided the claimant is otherwise eligible.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The next issue is whether the claimant refused 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.

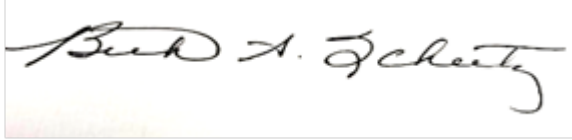
The employer offered to try to put the claimant on the schedule and see what it could do. No offer of work was made to the claimant. The claimant is qualified to receive benefits because no offer of suitable work was made. The employer did not appear at the hearing. It did not provide documentation or first-hand testimony. 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 as of July 19, 2020, provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision. The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's August 26, 2020, decision (reference 01) is modified in favor of the appellant. The claimant is denied unemployment insurance benefits from May 10, 2020, through July 18, 2020, because he was not able and available for work. The claimant did not refuse a offer of suitable work. Benefits are allowed as of July 19, 2020, provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision. The issue of the claimant's separation from employment is remanded for determination.

A handwritten signature in cursive script, reading "Beth A. Scheetz", is written in black ink on a white background. The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

Beth A. Scheetz
Administrative Law Judge

October 19, 2020
Decision Dated and Mailed

bas/scn