

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALICIA JURGENS**  
Claimant

**APPEAL 20A-UI-12477-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THIS IS IT INC**  
Employer

**OC: 03/15/20  
Claimant: Respondent (4)**

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Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours  
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On October 6, 2020, This Is It, Inc. (employer) filed a timely appeal from the October 1, 2020, reference 01, unemployment insurance decision that allowed benefits based on the determination it did not make an offer of work to Alicia Jurgens (claimant) on May 16, 2020. After due notice was issued, a telephone conference hearing was held on December 9, 2020. The claimant participated personally. The employer participated through Nicole Kidd, General Manager. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history. During the hearing, the parties waived notice on the issues of total, partial, and temporary unemployment; and, whether the claimant was employed part-time in the same hours and wages.

**ISSUES:**

Was a suitable offer of work made to the claimant?  
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?  
Was the claimant able to and available for work?  
Is the claimant totally, partially, or temporarily unemployed?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: On November 16, 2009, the claimant began working for the employer as a full-time stylist. In 2017, she requested to transfer to a part-time position, which the employer granted. The claimant typically worked Saturday, every other Sunday, and two nights a week for three hours each. She can elect to work more or fewer hours based on her personal schedule. The employer has up to forty hours a week that the claimant can work.

The claimant filed her claim for benefits effective March 15, 2020 and her weekly benefit amount is \$171.00. The claimant worked and earned \$82.81 during the week ending March 21. On March 22, the employer's business was shut down due to the COVID-19 pandemic.

On May 14, the employer notified the claimant that the business was reopening on May 16. The claimant notified the employer that she could not return to work, as she did not have a mask. The claimant returned to work effective June 6. However, she was only able to work weekends as the salon was closing at 7:00 p.m. instead of 9:00 p.m., and she did not have daycare to go to work earlier. She has worked and reported wages each week. If she has not worked during a given week after June 7, it is because she elected not to work; the employer has hours available for her to work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant declined the offer of work because she was not available. Additionally, once she made herself available and returned to work, the claimant was not unemployed as defined by Iowa law. Benefits are denied for the week ending March 21 and effective May 31.

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.

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 section 96.19(38) provides:

Definitions.

38. 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 Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). An individual can be totally, partially, or temporarily unemployed. Total and temporary unemployment occurs when a claimant has received no wages and performed no services during any given week. *Id.* In this case, the claimant was temporarily unemployed from March 22 through May 9, as the employer did not have any work available to her due to a public health emergency. Benefits during the temporarily layoff are allowed.

On May 14, the employer offered the claimant the ability to return to work on May 16. The offer was suitable, but the reason for the failure to accept the work was that the claimant was not available for work. She was waiting on a mask, and she refused to perform work even though hours were available. As the claimant was not available for work, she is not disqualified from benefits for refusing work, which means she would be denied benefits until she earned ten times her weekly benefit amount in insured wages. However, she is not eligible for benefits from May 10 to May 30, when work was available but she was not.

The claimant returned to work on June 6, and she has filed for benefits during weeks in which she worked and earned wages. Therefore, she was not totally or temporarily unemployed and

the inquiry necessarily turns to whether she was partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position, working the same hours and wages as contemplated at hire, they cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

The claimant requested to work a part-time position and the wages in her base period were all earned in part-time employment. Her hours have fluctuated based on her schedule, which was the expectation when she was transferred to a part-time position. As the claimant is working in the same hours and wages contemplated when she transferred to part-time employment, the claimant is not partially unemployed and is not eligible for benefits. **Benefits are denied for the week ending March 21 and effective May 31.**

**DECISION:**

The October 1, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant was temporarily unemployed and considered able to and available for work from March 22 through May 9, 2020, and benefits are allowed. The claimant declined an offer of work, but was unavailable at that time; therefore, benefits are denied from May 10 through May 30, 2020. During the week ending March 21 and effective May 31, 2020, the claimant was not totally, partially, or temporarily unemployed under Iowa law and benefits are denied.



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Stephanie R. Callahan  
Administrative Law Judge

December 21, 2020  
Decision Dated and Mailed

src/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance 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 self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.