

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAUL B TRAVIS

Claimant

APPEAL 20A-UI-12856-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATLANTIC PEST CONTROL LLC

Employer

OC: 03/29/20

Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 1, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible to receive unemployment insurance benefits because he refused a suitable recall back to work on April 1, 2020. The parties were properly notified of the hearing. A telephone hearing was held on November 20, 2020. The claimant, Paul B. Travis, participated personally. Attorney Stuart Higgins represented the claimant. Jennifer Wilson testified as a witness for the claimant. Ryan Hargens testified as a witness for the claimant. The employer, Atlantic Pest Control LLC, participated through witnesses William Menefee and Kerri Towne. The hearing was consolidated with Appeal No. 20A-UI-13341-DB-T and 20A-UI-13994-DB-T. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant able to and available for work?

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for the employer full-time as a service technician. He made his own schedule and was responsible for contacting customers, scheduling appointments, and spraying at homes and businesses. Mr. Menefee was his direct supervisor.

Claimant was on vacation until April 1, 2020. On March 31, 2020, Mr. Menefee, Ms. Wilson, Mr. Hargens and other employees met via Zoom to discuss continued employment with the company given that the COVID 19 pandemic had reduced the employer's work. Mr. Menefee had texted the claimant to meet via zoom; however, he did not get on the zoom meeting. On or about April 1, 2020; Jennifer Wilson, secretary to Mr. Menefee, called the claimant and explained that he was being laid off due to lack of work. No specific return to work date was given to him. No further offers to return to work were made to the claimant.

Claimant had filed an original claim for benefits with an effective date of March 29, 2020. Claimant has received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$2,255.00 from March 29, 2020 through May 2, 2020. Claimant received Federal Pandemic Unemployment Compensation (FPUC) benefits of \$3,000.00 for five weeks between March 29, 2020 and May 2, 2020.

Claimant permanently separated from employment. The issue of whether the claimant's separation from employment with this employer is disqualifying to him receiving any further benefits after May 2, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.5(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.

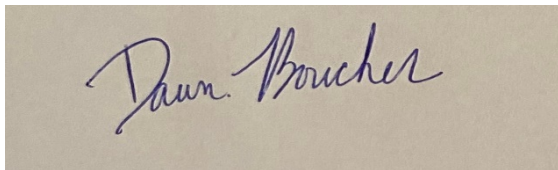
Claimant was temporarily laid off due to lack of work on April 1, 2020. No request to return to work after that date was communicated to the claimant. The claimant did not fail to accept an offer of suitable work as no return to work offer was made. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 1, 2020 (reference 01) unemployment insurance decision is reversed. The claimant was able to and available for work and there was no offer of work communicated to the claimant. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of whether the claimant's permanent separation from employment after May 2, 2020 is disqualifying from the claimant being able to receive any future benefits after May 2, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

December 2, 2020
Decision Dated and Mailed