

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DENNIS D BRAUER**  
Claimant

**EMPLOYMENTCONNECTIONS INC**  
Employer

**APPEAL 16A-UI-08781-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/29/15**  
**Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 10, 2016, (reference 06) unemployment insurance decision that allowed benefits based upon a work refusal. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2016. Claimant participated. Employer participated through corporate accountant Tammy Christenson. Employer's Exhibit 1 was received.

**ISSUES:**

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to work and available for work effective July 14, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an additional claim effective July 24, 2016. He had back surgery on June 23, 2016, and had medical restrictions of lifting 30 pounds, cannot stand or sit for more than an hour in any position, and cannot bend over to pull weeds or pick up rocks or mow lawns. He last worked for the employer as a fire watcher for a welding business on July 22. That job met his medical restrictions. Diana Salmeron staffing coordinator made an offer of work in lawn maintenance on July 27. That offer required bending over to pick up rocks, which did not meet his restrictions. It would have paid \$12.00 per hour for full-time work.

The medical restrictions were removed the third week of August 2016 (effective August 14, 2016), and the doctor's office was to fax the release to the employer but it did not. He has been searching for work at grain elevators, and ethanol production/load out. Salmeron discussed but did not offer other possible jobs including welding in Sioux Rapids and with an egg processing facility. On August 8 he applied for three jobs on the employer's web site and heard nothing back. His average weekly wage (AWW) is \$449.37 and 75 percent of that is \$337.03.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant declined an offer of work because he was temporarily not able to do that type of work.

Iowa Code section 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 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. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was temporarily not able to perform that type of work. Therefore, he is not disqualified from receiving benefits, but is not eligible for the period for the three weeks ending August 13, 2016, when he was released without restriction.

**DECISION:**

The August 10, 2016, (reference 06) unemployment insurance decision is modified in favor of the appellant. Claimant declined an offer of work but was temporarily not able to perform that type of work. Benefits are for the three weeks ending August 13, 2016.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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