

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JODI FEE**  
Claimant

**C V K CORPORATION**  
Employer

**APPEAL 20A-UI-00527-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/22/19  
Claimant: Appellant (4)**

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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 January 10, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible to receive unemployment insurance benefits because she refused an offer of suitable work on December 4, 2019. The parties were properly notified of the hearing. A telephone hearing was held on February 4, 2020. The claimant, Jodi Fee, participated personally. The employer, C V K Corporation, participated through witness Vincent Cople. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is 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 filed her initial claim for unemployment insurance benefits with an effective date of September 22, 2019 after separating from full-time employment with Executive Auto Shippers.

On November 7, 2019, she began working a temporary part-time position with Schuring & Uitermarkt P.C. as an administrative assistant during the tax season, earning \$14.00 per hour. She was told upon hire that the job would start at part-time, be full-time during tax season and possibly be ¾ time following tax season. Since November 7, 2019 through January 5, 2020, the claimant had been working from 9:00 a.m. to 5:00 p.m. on Wednesday through Friday each week. She moved to temporary full-time employment effective January 5, 2019, working five days per week.

On December 4, 2019, this employer offered claimant a job working as a receptionist and sales associate at its eye care center. The job paid \$11.00 per hour for 40 hours per week and would start immediately or upon claimant's own schedule. Claimant refused the offer because she

wanted to continue working for Schuring & Uitermarkt P.C. since the pay was higher, even though it was a temporary job.

**REASONING AND CONCLUSIONS OF LAW:**

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

In order to be eligible for benefits, the claimant must first establish that she is able to and available for work.

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.

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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant's availability for other work is unduly limited as she is working to such a degree that removes her from the labor market. Therefore, the claimant is not disqualified for refusing an offer of work, but is not eligible for the period of time that she removed herself from the labor market by working the majority of the work week (Wednesday through Friday). Benefits are denied effective the benefit-week beginning November 10, 2019 and are withheld until such time as claimant makes herself available for full-time work.

**DECISION:**

The January 10, 2020 (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was not available for work as she is working to such a degree that removes her from the labor market. No disqualification based upon a refusal of offer of work is imposed. Benefits are withheld effective November 10, 2019, due to her unavailability, and continuing until such time as the claimant makes herself available for work.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn