

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHARLIE H SEARS**  
Claimant

**CAPITAL LANDSCAPING LLC**  
Employer

**APPEAL 17A-UI-03008-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/25/16  
Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal to the March 10, 2017, (reference 02) unemployment insurance decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 11, 2017. The claimant did not respond to the notice of hearing to furnish a phone number in the scheduled hearing. The employer participated by way of Philip Glaser, managing partner. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant performed work for this employer beginning in April 2016 until February 16, 2017, as a crew leader/area supervisor, making \$15.25 in the summer and \$23.25 per hour in the winter. Between December and mid-February, the claimant was laid off, except for snow removal as needed.

On February 20, 2017, the employer attempted to recall the claimant to work, for full-time work. The offer was made in the 9th week of unemployment. The claimant's weekly average wage was \$522.00. The office manager, Katharina Glaser, contacted the claimant, February 19, 2017 after sending the claimant a text message. The claimant told the employer he was in Creston and could not work February 20 or 21, but would be back to work on February 22, 2017. The claimant did not return to work on February 22 or 23, 2017. The employer reminded the claimant to report to work on February 24, 2017, because of pending snow removal, and

received a text message, intended for his mother, requesting she bring him soup. The claimant did not return thereafter.

The claimant did not participate in the hearing or offer a written statement in lieu of participation.

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

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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 Code § 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(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

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.

The unemployment insurance law under Iowa Code § 96.4-3 requires that a claimant be able to and available for work, and Iowa Code § 96.5-3-a imposes a disqualification on individuals who refuse an offer of suitable work without good cause. In this case, the employer made a valid offer for the claimant to return back to work, effective February 20, 2017. The offer was communicated by text and phone and based on the evidence presented, the claimant failed to accept a recall to return work, on a full-time basis, at his prior rate of pay. The wages offered meet the formula found in the unemployment insurance law for suitable work. The claimant did not accept the position, stating he was in Creston (for unknown reasons) and then that he was sick. The claimant did not attend the hearing and did not provide good cause to decline an otherwise suitable job. The claimant is disqualified for receiving unemployment insurance benefits effective February 20, 2017.

**DECISION:**

The unemployment insurance decision dated March 10, 2017 (reference 02), is reversed. The claimant is disqualified from receiving unemployment insurance benefits effective February 20, 2017, and continuing until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**REMAND:** The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs