

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ERIC R DEBOUE**  
Claimant

**QPS EMPLOYMENT GROUP INC**  
Employer

**APPEAL 21A-UI-24250-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/25/19  
Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.5(3)a – Failure to Accept Work  
871 IAC 24.24(1)A – Suitable Work

**STATEMENT OF THE CASE:**

On November 3, 2021, the employer/appellant appealed a representative's October 28, 2021, decision (reference 04) that concluded claimant was eligible to receive unemployment insurance benefits because no offer of work with QPS employment Group, Inc. (employer) was actually made. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2021. Claimant did not call into the hearing to participate. Employer participated through Unemployment Coordinator, Jessica Segner. Administrative notice was taken of claimant's unemployment insurance benefits.

**ISSUE:**

The issue is whether the claimant refused suitable work and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

Claimant was laid off by the employer. On March 16, 2021, the employer and claimant had a phone conversation where the employer discussed claimant coming into the office to discuss his availability for work. Claimant responded that he would not be able to have the meeting until after Monday, March 22, 2021, because he was out of town. Claimant informed employer he would call them when he was back in town. Claimant did not call employer back to discuss his availability for jobs.

On April 8, 2021, the employer called claimant to see if he was looking for work and to see if they had any jobs that would meet his skill set. Claimant informed employer that he was out of town and not currently looking for work.

The employer did not offer a job to claimant because he indicated he was not looking for work.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant is able and available for work.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(25) and (27) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was not present during the hearing to establish his ability to work and availability for work. Employer established that claimant informed her he was out of town on March 16, 2021.

On April 8, 2021, claimant informed the employer he was still out of town and was not looking for work. The claimant has not met his burden of proof establishing he was available for work effective March 16, 2021. Accordingly, he is not eligible for unemployment insurance benefits effective March 16, 2021.

The issue of whether claimant refused an offer of suitable work is moot since claimant has not met the availability requirements of Iowa Admin. Code r. 871-24.24(4).

**DECISION:**

The representative's October 28, 2021, decision (reference 04) is REVERSED. Claimant is not able to work and available for work effective March 16, 2021. Benefits are denied.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

December 28, 2021  
Decision Dated and Mailed

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