

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHRYN BARRY
Claimant

APPEAL 24A-UI-02759-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAYDEL COMMUNITY SCHOOL DISTRICT
Employer

**OC: 12/31/23
Claimant: Appellant (2)**

Iowa Code § 96.5(3)a – Refusal of Work
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On March 8, 2024, the claimant filed an appeal from the unemployment insurance decision dated February 28, 2024, (Reference 08) that denied benefits. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 10:00 a.m. on March 22, 2024. The claimant participated personally. The employer participated through Amanda Christiansen, Associate Principal, Alex Stubbers, Director of Human Resources and Amber Ray, Executive Director of Business and Operations. No exhibits were offered or admitted to the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant refuse to apply for or accept an offer of suitable work?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked for Hurd Realty from February 2023 until October 2023, where she earned \$26.00 per hour. The claimant then worked for Kimberly Development from October 2023 until January 2024, earning \$28.00 per hour. The claimant applied for an open position with Saydel Community School District, specifically the Gear Up Iowa Coach position the employer posted in January 2024. The claimant applied for this position on January 26, 2024, and interviewed on January 31, 2024. On February 9, 2024, the school district offered the claimant the position. The compensation offered was not a formal salary. Rather, there was \$22,000.00 in funds remaining for this grant-based position in the fiscal year ending June 30, 2024, and \$33,000.00 in funds expected to be available in the following fiscal year. The claimant would be expected to fund the program—including her compensation—from these grant dollars. The claimant inquired further regarding health insurance. She had paid approximately \$600 each month for insurance with Kimberly and did not have health insurance through Hurd. The claimant would need to pay approximately \$621.00 per month for health insurance through the Saydel Community School District.

The claimant had also interviewed for a job with the State of Iowa and had been advised that an offer would be forthcoming. The claimant interviewed for that position on January 29, 2024, and expected the salary offer to be significantly higher than the compensation offered by the Saydel position. The claimant did receive an offer of employment from the State of Iowa on February 23, 2024, and she accepted that offer.

The claimant's base period includes wage credits earned during the Third Quarter of 2022 through the Second Quarter of 2023. The claimant's high quarter was the Second Quarter of 2023 and she earned \$7,790.73. The Claimant's average weekly wage (AWW) during that time was \$599.00.

REASONING AND CONCLUSIONS OF LAW:

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

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 Code section 96.5(3) provides, in pertinent part:

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.

...

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 week of unemployment.
 - (b) Ninety percent, if the work is offered during the second through the third week of unemployment.
 - (c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.
 - (d) Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.
 - (e) Sixty percent, if the work is offered after the eighth week of unemployment.
- (2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(15)i provides:

Failure to accept work and failure to apply for suitable work.

(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- i. Whether work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

A two-step analysis is used to determine whether a claimant has refused a suitable offer of work. First, the offer must be for suitable work. If suitability is established, then, claimant must have a good cause reason for refusal. See Iowa Admin. Code r. 871-24.24(3).

There was a bona fide offer of work, and the claimant declined it. The offer took place during the claimant's sixth week of unemployment. This means the proposed job would need to include gross weekly wages of seventy percent of the claimant's AWW, or \$419.30. Given the nature of the position the claimant was offered, it is uncertain what the gross weekly wage would have been. The funds needed to cover the entire grant program and the claimant's compensation. Therefore, nothing in the record clearly reflects the suitability of this offer of work for the purposes of eligibility for unemployment insurance benefits. In any case, the claimant had good cause for refusal in that the compensation was uncertain. The claimant also had good reason to believe that a suitable offer was forthcoming from another employer. Benefits are allowed.

DECISION:

The February 28, 2024, (Reference 08) unemployment insurance decision is REVERSED. The claimant did not refuse a suitable offer of work. Benefits are allowed.



David J. Steen
Administrative Law Judge

April 3, 2024
Decision Dated and Mailed

DJS/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.