

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KALI FINNESTAD**  
Claimant

**LILYPAD LEARNING CENTER LLC**  
Employer

**APPEAL 20A-UI-06991-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

On June 25, 2020, Kali Finnestad (claimant/appellant) filed an appeal from the June 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a refusal to accept suitable work.

After due notice was issued, a telephone conference hearing was held on August 3, 2020. Claimant participated personally. Lilypad Learning Center LLC (employer/respondent) participated through Owner/Executive Director Sara Hillebrand. Assistant Director Krystal Martin participated as a witness for employer.

Employer's Exhibits 1-5 were admitted. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Did the claimant refuse to apply for or accept an offer of suitable work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant began employment with employer on February 15, 2016. Claimant was employed as a full-time lead teacher. Claimant was contracted to work 140 hours per month and typically worked approximately 37.5 hours per week. Claimant was last present at the job performing work on March 25, 2020. Claimant was laid off at that time due to a lack of work. On or about April 30, 2020, a notice was sent to claimant informing claimant she would be recalled to work on May 11, 2020. Claimant was discharged by Hillebrand on May 4, 2020.

Around April 30, claimant received from employer a schedule which had her scheduled for 22.5 hours per week. Martin contacted claimant shortly thereafter, informing her claimant that in making the schedule she had forgotten about the requirement that all lead teachers work at least 30 hours per week during the summer. Martin offered to either extend claimant's hours on the days she was scheduled to work or schedule her an additional day each week in order to reach the 30-hour requirement. Exhibit 1.

Claimant responded by asking what would happen if she stayed at the 22.5 hours initially scheduled. Martin replied that if claimant chose that, employer would have to fill claimant's lead teacher position and the person filling that position would have priority for a lead position in the fall. She would also lose various full-time benefits. Exhibit 1.

Claimant responded that she would like to stay at 22.5 hours. Exhibit 2. Martin replied, asking for clarification and to confirm claimant knew employer would then have to fill the lead teacher position. Claimant replied, "I will work 22.5 hours that we discussed back in January" and "what you choose to do next is up to you." Claimant and Martin had in January discussed claimant moving to 22.5 hours per week in the summer. However, employer never formally granted claimant's request to move to 22.5 hours. Martin explained this to claimant and reiterated that she would lose her lead position if she would not agree to a schedule of at least 30 hours week. Exhibit 2. Martin told claimant that regardless of her decision she would continue to be "a valued staff" and employer would "work to figure out a different position come fall." Exhibit 2.

On May 1, Hillebrand emailed claimant to explain the 30-hour requirement. Hillebrand told claimant she wanted to maintain her employment but they would have to hire another lead teacher if she would not agree to at least 30 hours per week. Exhibit 3.

Claimant replied that same day. She told Hillebrand she would work 22.5 hours, saying "I talked to [Martin] back in January and said that I wanted part time hours working three days a week...and that is what I'm going to do." Claimant accused Hillebrand of "making up shit and trying to put policies into play to cover your own asses." She accused Hillebrand of lying about policies for years. She reiterated she would work the 22.5-hour schedule and "whatever you on your end wants to do from there is on you. Don't come at me saying it is my choice to step down from lead when you know very well it's your choice to try to strong arm me into doing what you want me to do or to keep other staff happy that if you were just been honest with them they would have been fine." Claimant wrote further, "I am not buying any of the 'I'm value' shit" and "if I was valued you would give me the grace of the 7.5 hours I'm short and let me do my job." Exhibit 4.

Hillebrand replied on May 4. She told claimant her email was "attacking and hurtful." She told claimant since she had refused to return to work as provided in her contract and as requested by Martin and herself, she was discharged. Exhibit 5.

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

For the reasons that follow, the June 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a refusal to accept suitable work is **AFFIRMED**.

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.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

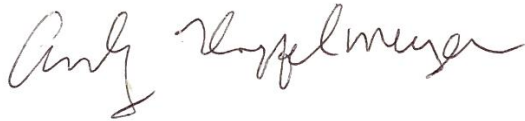
Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The administrative law judge finds a bona fide offer of work was made to claimant; the offer of work was suitable, as it was the same work she had been doing prior to the layoff; and claimant did not have a good cause reason for failing to accept it the offer. The offer of work was to return to work at a minimum of 30 hours per week. This was a reasonable offer, as claimant had been working that much or more during her employment. Claimant has not shown a good cause reason for declining this offer. While claimant may have wished to return at 22.5 hours per week, a return to work at that schedule was never formally offered or accepted.

**DECISION:**

The June 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a refusal to accept suitable work is AFFIRMED. Claimant refused an offer of suitable work without a good cause reason for doing so. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

August 10, 2020  
Decision Dated and Mailed

abd/mh

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.