

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MITCHELL HAGEN**  
Claimant

**ROC TAPROOM INC**  
Employer

**APPEAL 21A-UI-16697-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.5(3)a – Failure to Apply for or Accept Suitable Offer of Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 20, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective May 1, 2020 as he failed to accept a suitable offer of work. The parties were properly notified of the hearing. A telephone hearing was held on September 21, 2021. The claimant participated personally. The employer participated through witness Juliet Diaz. Mikaylah Veglahn observed on behalf of the employer. Claimant's Exhibit A was admitted. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant able to and available for work from March 15, 2020 through August 1, 2020?  
Did the claimant fail to apply for or accept a suitable offer of work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time bartender and server at the employer's restaurant. He typically worked 3 or 4 shifts per week. The restaurant closed pursuant to the State of Iowa Governor's orders regarding the COVID-19 pandemic. The restaurant was closed from March 15, 2020 through May 18, 2020. It reopened on May 19, 2020 at only 50% capacity and with reduced operating hours. Claimant returned to work but his shifts were reduced hours due to the COVID-19 pandemic restrictions. Claimant worked reduced hours from May 19, 2020 through June 28, 2020, which was the last day he was scheduled to work. Claimant was able to and available for part-time work from March 15, 2020 through August 1, 2020. Claimant filed weekly-continued claims for benefits from March 15, 2020 through August 1, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

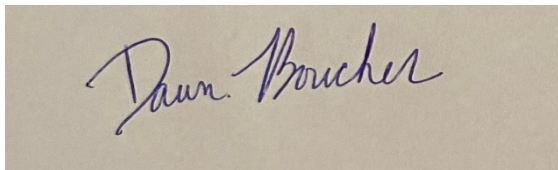
Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2). Claimant credibly testified that he was able to and available for part-time work from March 15, 2020 through August 1, 2020.

**DECISION:**

The July 20, 2021 (reference 01) unemployment insurance decision is reversed. The claimant established that he was able to and available for work from March 15, 2020 through August 1, 2020. Claimant did not refuse to apply for or refuse to accept a suitable offer of work as the claimant continued working for the employer. Benefits are allowed effective March 15, 2020, provided the claimant remained otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

September 24, 2021  
Decision Dated and Mailed

db/scn