

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ANTHONY P ENNIS
Claimant

APPEAL NO: 19A-UI-08715-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONSON & SONS INC
Employer

OC: 09/29/19
Claimant: Appellant (1)

Section 96.5(3)a – Work Refusal
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 1, 2019, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 2, 2019. The claimant participated in the hearing. Stacey Cox, Payroll and Human Resources and Shea Monson, Safety Department; participated in the hearing on behalf of the employer. The parties waived notice on the issue of whether the claimant refused a suitable offer of work.

ISSUE:

The issues are whether the claimant refused a suitable offer of work and whether he is able and available for work.

FINDINGS OF FACT:

The employer made an offer of work to the claimant on October 9 or 10, 2019. That offer included the following terms: A full-time dispatcher position working from 6:00 a.m. to 5:00 p.m. or 7:00 a.m. to 6:00 p.m. earning \$16.00 per hour or \$640.00 per week. The claimant's average weekly wage is \$895.40. The offer was made in the second week of unemployment. The claimant rejected the offer because he did not have childcare and his wife, both sets of the children's grandparents, and a maternal aunt were unable to help with childcare.

The second issue is whether the claimant is able and available for work. The claimant's ability to accept work is limited by the fact he does not have any flexibility on his childcare. He must be at his childcare provider's place of business by 5:30 p.m. to pick up his children.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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.

The offer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. The claimant's average wage was \$895.40 while the job paid \$640.00. That alone means the offer was not suitable.

The second issue is whether the claimant is able and available for work. The administrative law judge finds that he is not. The claimant is unduly limited by not having any childcare that can watch his children past 5:00. Many jobs, including ones the claimant has applied for require the claimant be allowed to work until 5:00, 5:30 or 6:00 p.m., none of which are unreasonable times. The claimant is unable to work any of those hours because he does not have childcare. Consequently, benefits are denied.

DECISION:

The November 1, 2019, reference 03, decision is affirmed. The claimant did not refuse a suitable offer of work but is not able and available for work because he does not have child care that can cover the hours he would work. Benefits are withheld until such time as the claimant has access to flexible childcare that could cover his work schedule and reports to the Department and proves that is the case.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn