

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EVARISTE M KAMANGA**  
Claimant

**ASSOCIATED MATERIALS LLC**  
Employer

**APPEAL 19A-UI-00365-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/24/17  
Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 4, 2019, (reference 05) unemployment insurance decision that allowed benefits based upon a determination that the offer of work made to claimant was not suitable for him. After due notice was issued, a telephone conference hearing was held on January 28, 2019. Claimant participated and testified. Employer participated through Michelle Hughes.

**ISSUES:**

Was a suitable offer of work made to the claimant?  
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant filed his original claim for benefits the week starting December 24, 2017. On November 29, 2018, the entire second shift wrapping department was notified that their positions were being eliminated. They were told first shift wrapping positions were available and to sign up if they were interested. Claimant has worked second shift throughout his entire employment and is not available to work first shift hours. Claimant explained this to the employer and on Tuesday December 4, 2018, was offered a second shift position in the shipping department via telephone and text message. Claimant's hours, 5:00 p.m. to 5:00 a.m., and pay, \$13.27 per hour, would remain the same, but the work in the shipping department was more physically demanding. Claimant testified he knew, based on his work in the wrapping department, that he could not meet the physical demands of the shipping department position, so he declined the position. Claimant's average weekly wage is \$762.69.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the offer of work was not suitable given claimant's background and physical fitness.

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 Admin. Code r. 871-24.24(11) provides:

(11) Bulletin board notice of work. A bulletin board notice for employees to work during a plant shutdown shall not constitute an offer of work by the company. Such offer of work must be by personal contact to the employee.

Here, the offers made were within the benefit year and did meet the wage requirements. However, the offer for claimant to work first shift, does not constitute an offer of work, as it was not made by direct personal contact with the claimant, but rather through a general announcement and sign-up sheet. In regards to the offer for the second shift position, both parties agree the position claimant was offered was different from his prior position in the wrapping department in that it was more physically demanding. Claimant provided credible testimony that, based on his work in the wrapping department, he knew he would not be able to meet the physical demands of the shipping position, so he turned the position down. Thus, the offer was unsuitable given claimant's background, experience, and physical fitness. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The January 4, 2019, (reference 05) unemployment insurance decision is affirmed. The offer of work was not suitable. Benefits are allowed, provided claimant is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs