

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VANCE E ADAIR
Claimant

DALL-HAUS INC
Employer

APPEAL 20A-UI-12481-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (2)

Iowa Code § 96.4-3 – Able and Available for Work
Iowa Code § 96.5-3-a – Refusal of Suitable Work
871 IAC 24.24(15)i – Suitable Work
871 IAC 24.24(1)a – Bona Fide Offer of Work

STATEMENT OF THE CASE:

Dall-Haus (employer) appealed a representative's October 1, 2020 decision (reference 02) that concluded Vance Adair (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Austin Wyre, General Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 20, 2018, as a team member at the employer's Culvers restaurant.

The claimant requested and the employer granted leaves of absence from March 15, 2020, through May 6, 2020, from May 17, 2020, through June 7, 2020, and from October 7, 2020, through October 14, 2020. Each time, the claimant felt uncomfortable working due to the Covid-19 pandemic and/or medical issues. He is working for the employer at present.

On or about May 19, 2020, the employer sent the claimant a return to work letter. It notified the claimant there was work available at any time and any hours so long as the claimant was willing to work. The letter indicated it would accommodate the claimant's schedule and needs. The employer sent similar letters to many team members who were in the claimant's situation. It needed workers.

On or about May 16, 2020, a few days before the letter was sent to the claimant, the general manager called the claimant. He stated the information in the letter. The general manager told the claimant there was a job available when the claimant felt comfortable returning at the same hours and wages as when he was hired. The claimant chose to remain on leave.

The claimant filed for unemployment insurance benefits with an effective date of May 17, 2020. His weekly benefit amount was determined to be \$78.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after May 17, 2020. He did not file any weekly claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant refused an offer of suitable work.

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.

The employer had personal contact with the claimant on or about May 16, 2020. The employer offered work for the claimant. The claimant was on a leave of absence and chose not to accept the work offer at that time.

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

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1), (10), and (23) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

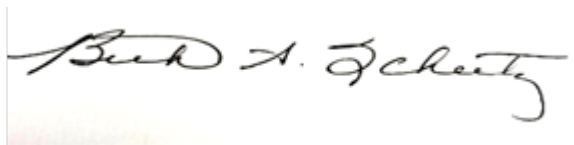
(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not participate in the hearing and did not provide evidence about his ability to work. When employees are unable to perform work due to a medical condition or working, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits because he was not available for other work when he was working for the employer. Benefits are denied as of May 17, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The representative's October 1, 2020 decision (reference 02) is reversed. An offer of work was made on or about May 16, 2020. The claimant was not able or available for work. Benefits are denied as of May 17, 2020.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

December 17, 2020
Decision Dated and Mailed

bas/scn