

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LESLIE E MUSSER**  
Claimant

**AVEX LLC**  
Employer

**APPEAL 21A-UI-16185-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21  
Claimant: Appellant (4R)**

Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant/appellant, Leslie E. Musser, filed an appeal from the July 13, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 7, 2021. The claimant participated. The employer participated through Tom Lutz, president. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to work and available for work effective January 25, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer makes wine bottle stoppers. The company consists of Mr. Lutz, his business partner, and claimant only. Employer’s building is approximately 5000 square feet with 25 feet high ceilings. Claimant’s position did not require her to interact with the public, allowed for some staggering of hours, and had limited interaction with Mr. Lutz or the other employee, except for periodic quality control checks”, which would last 1-2 minutes.

Claimant previously worked for the employer from January 2020 until mid-March 2020 when the COVID-19 pandemic caused business to decline and claimant was laid off. Employer contacted claimant about returning to work January 25, 2021. Claimant expressed concern about COVID-19 safety protocols, as she is considered high-risk and frequents contact with her 80 year old aunt. Employer agreed for claimant to return to work, at least 30 hours per week at \$16-17 per hour. Employer also agreed to have all three employees wear face masks, wipe down work stations and have hand sanitizer available. Claimant initially agreed to return to work,

acknowledged that face masks, hand sanitizer and wipes were being used when she visited the site. She changed her mind and stated she would not return due to her concerns with safety protocol. She notified employer, and permanent separation ensued. The issue of claimant's permanent separation has not yet been addressed by the Benefits Bureau.

Claimant secured new employment effective April 20, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits effective January 25, 2021.

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). **Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work** and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases. (emphasis added)

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Employer in this case had work available to claimant effective January 25, 2021. Employer took reasonable steps to protect claimant, including masks, sanitizing surfaces and hand sanitizer. It cannot be ignored that employer consisted of two other employees, in a 5,000 foot warehouse,

with limited interaction with each other and no public interaction. These were reasonable COVID-19 precautions, given the circumstances, timing of the pandemic, and nature of employment. Claimant determined she was still not comfortable working, even though work was available. The administrative law judge is persuaded that claimant's self-imposed restrictions were so severe that the employer would not have met her expectations of feeling safe. Therefore, based on the evidence presented, the administrative law judge concludes the claimant was not able to and available for work because she was unwilling to work during hours in which work was available. Regular state unemployment insurance benefits are denied.

The issue of claimant's permanent separation/requalification is remanded to the Benefits Bureau for an initial investigation.

**DECISION:**

The July 13, 2021, (reference 04) unemployment insurance decision is modified in favor of claimant. This decision replaces the disqualification that requires claimant earn ten times her weekly benefit amount (based upon a work refusal) to requalify for benefits.

The claimant is not available for insured work effective January 25, 2021, and regular, state-funded unemployment insurance benefits are denied. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

**REMAND:**

The issue of claimant's permanent separation/requalification is remanded to the Benefits Bureau for an initial investigation.



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September 14, 2021  
Decision Dated and Mailed

jlb/ol