

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER A LAMB
Claimant

SALON ARIA LLC
Employer

APPEAL 21A-UI-15062-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1R)

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 claimant/appellant filed an appeal from the June 23, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible to receive unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 27, 2021, and was consolidated with the hearing for appeal 21A-UI-15064-S2-T. Claimant Jennifer A. Lamb participated personally was represented by non-attorney representative Michael Lamb. Employer Salon Aria, LLC, participated through owner Christeen McClimon. Claimant's Exhibits 1 – 16 were received and admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

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 reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a stylist from December 3, 2012, until August 27, 2020, when she separated from employment.

Employer closed on March 17, 2020 due to the COVID-19 pandemic. On, or about May 16, 2020, the employer reopened and asked claimant to return to work at her same pay rate and in the same position she had before the employer closed. The offer was made in the 9th week of unemployment.

Claimant did not return to work upon receiving the offer because her husband suffers from an underlying health condition which causes him to be high risk for COVID-19. She was concerned about protecting him. Additionally, claimant homeschooled her children when schools closed, again, to protect her husband's health, and claimant needed to be home for instruction and guidance. Finally, claimant was concerned about whether her clients would return to the salon and whether business would be strong enough to earn a sufficient income. She did not voice

her concern about her income to employer. Claimant planned to return to work when it was safe to do so, and employer agreed to allow claimant the time off from work. Claimant was able to return to the workforce after her children were finished with homeschooling on or about June 4, 2021.

There has been no initial investigation or decision regarding the issue of separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant declined an offer of work because she was not available for work.

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 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. 871-24.23(10) provides:

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

(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.

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.

Iowa Admin. Code r. 871-24.24(15)(i) provides:

Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

...

i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

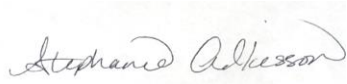
Employer's offer was suitable. Claimant had good cause for refusing the recall to work. Therefore, claimant's refusal is not disqualifying. However, the reason for claimant not accepting work was because she was not available for work. Claimant was not available for work due to taking a leave of absence to care for family members and to homeschool her children. Accordingly, benefits are denied.

DECISION:

The June 23, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant declined an offer of work but was unavailable at the time. Benefits are withheld effective March 15, 2020.

REMAND:

The issue of separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
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September 2, 2021
Decision Dated and Mailed

sa/mh