

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAMIE L LUDWICK**  
Claimant

**CENTERVILLE LODGING LLC**  
Employer

**APPEAL 16A-UI-08431-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/12/16  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 25, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 22, 2016. Claimant did not participate. Due to phone issues, the hearing did not start until 10:25 a.m. Claimant registered for the hearing at approximately 10:23 a.m., but when contacted after the hearing started at approximately 10:26 a.m., she did not answer at the number provided. Employer participated through owner Dharam Chaudhari.

**ISSUES:**

Did the claimant refuse to apply for or accept an offer of suitable work?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant filed her claim for benefits with an effective date of June 12, 2016.

On June 9, 2016, the employer purchased and took over the company claimant previously worked for. When the employer acquired the company, the employer told all the employees that they were going to allow them to continue employment with the employer. Employer made an offer of work to claimant on June 9, 2016. Claimant was offered to work for the employer at the same pay rate and as a full-time housekeeper, just like she was with the previous company. The employer told claimant she could continue working as a full-time housekeeper; claimant told the employer ok.

On June 10, 2016, claimant was not scheduled to work so she could move from the owner's apartment to a different room. On June 10, 2016, claimant did not move because she was not feeling well. Later on June 10, 2016, claimant approached Mr. Chaudhari and stated she wanted to continue working for the employer. Mr. Chaudhari responded ok, that the employer

wanted to hire her. Mr. Chaudhari told claimant that her pay would remain the same. Claimant was scheduled to work for the employer on June 11, 2016. On June 11, 2016, claimant did not show up for work. Later on June 11, 2016, Mr. Chaudhari spoke with claimant about not working. Claimant told the employer that she did not feel well. Claimant told the employer that she did still want to work. On June 12, 2016, claimant was scheduled to work, but she did not show up for work. Claimant did not call the employer. The employer tried to contact claimant, but she did not answer. On June 14, 2016, the employer tried to contact claimant at her apartment, but she did not respond. On June 28, 2016, the employer tried to contact claimant, but she did not respond. Around June 28, 2016, claimant's boyfriend came to the employer and asked for more time for claimant to get her stuff out of her apartment. In the middle of July 2016, claimant turned in her key. Claimant had not worked for the employer since the employer took over operations on June 9, 2016. There was work available for claimant with the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

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(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Claimant was offered to work for the employer on June 9, 2016; however, she did not file a claim for benefits until the week beginning June 12, 2016. The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year.

However, for the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work effective June 12, 2016.

Iowa Code § 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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor

market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. The employer presented credible evidence that claimant was offered continued employment as a housekeeper and at her same pay rate when it took over operations from the previous company on June 9, 2016. The employer scheduled claimant to work on June 11, 2016, but she did not work. When the employer spoke to her, she stated she was sick, but still wanted to work for the employer. Claimant was also scheduled to work on June 12, 2016, but she did not work and she did not call the employer to report her absence. The employer tried to contact claimant, but she did not respond. The employer tried to contact claimant on more than one occasion after June 12, 2016, but she did not respond. The employer spoke to claimant's boyfriend around June 28, 2016. In the middle of July 2016, claimant turned in her key to her room.

Although the employer has had work available for claimant since June 9, 2016, as a housekeeper and at the same pay, she has refused to work for the employer. Claimant has failed to present evidence that she was able to work, available for work, or actively and earnestly seeking work since the employer took over operations on June 9, 2016. Accordingly, benefits are denied.

**DECISION:**

The July 25, 2016, (reference 02) unemployment insurance decision is reversed. Claimant is not able to work and available for work effective June 12, 2016. Benefits are denied.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs