

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRIANNA M SCHROEDER
Claimant

APPEAL NO: 17A-UI-09299-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES – IOWA INC
Employer

OC: 06/18/17
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 1, 2017, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 28, 2017. The claimant participated in the hearing. Jane Brown, Account Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Temp Associates - Iowa and last assigned at Clinton National Bank until June 17, 2017, at which time the assignment was ended due to the claimant's errors. The claimant notified the employer she was available for work within three days of the completion of the assignment.

The employer and claimant communicated through text messages and email. On June 26, 2017, the claimant sent the employer an email stating she was starting a new job in one to two months and wanted to collect unemployment to pay her mortgage until she started her new job. She actually started the new position July 11, 2017, and was discharged August 2, 2017. At that time the first five weeks of unemployment started over again for purposes of determining whether an employment offer met the claimant's average weekly wage.

On July 26, 2017, the employer texted the claimant and offered her a position at Skyline earning \$10.00 per hour. The claimant did not respond to the text message. On August 14, 2017, the employer texted the claimant and asked her if she was still available. On August 18, 2017, the employer texted the claimant and again offered her a position at Skyline earning \$10.00 per hour. On September 8, 2017, the employer texted the claimant again and offered her a position at Skyline earning \$10.00 per hour. The claimant did not respond to any of the offers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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. 871-24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The claimant told the employer she was waiting for a new job to start in one to two months and wanted to collect unemployment insurance benefits to pay her mortgage while she waited for the new job. While that would usually show the claimant is not able and available for work because she was waiting for a specific employer, in this case the employer did not offer the claimant work until July 26, 2017, at which time she was working at her new job. When the employer made the claimant a second offer on August 18, 2017, the claimant was in her second week of unemployment and the offer needed to meet 100 percent of her average weekly wage which was \$528.66. The employer's offer of \$10.00 per hour did not meet the required amount. The same situation applies to the September 8, 2017, offer. Consequently, the administrative law judge must conclude the claimant did not refuse a suitable offer of work.

DECISION:

The September 1, 2017, reference 04, decision is affirmed. The claimant is able to work and available for work effective June 18, 2017, and did not refuse a suitable offer of work. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn