

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**GAYLE R BUSH**

Claimant

and

**L A LEASING INC**

Employer

**HEARING NUMBER: 17BUI-05466**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-3-A**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the result reached in the administrative law judge's decision is correct. With the following modification, and with the exception indicated below, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are otherwise adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION IN THE CLAIMANT'S FAVOR**:

The findings of fact are modified by inserting the words "the opportunity to interview for" between "claimant" and "two full-time jobs" in the first sentence of the third paragraph. The findings of fact are further modified by inserting the words "an opportunity to interview for" between "of" and "work" in the final sentence of the third paragraph.

The Reasoning and Conclusions of Law is modified by striking the sentence "The claimant refused an offer of suitable work." on page 2 of the Decision. The Reasoning and Conclusions of Law is further modified by striking the final paragraph of the Reasoning and Conclusions of Law with the exception of the sentence "Benefits are denied."

The Reasoning and Conclusions of Law is modified by inserting following the quote from Iowa Code §96.5(3) the following analysis:

The rules of the Department provide:

**24.24(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. *b.* Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

871 IAC 24.24(1). Here the Employer offered only the opportunity to interview for a job and so we have neither a bona fide offer of work, nor a definite refusal of work. Even if we did the Claimant has shown good cause for refusing the offer because she was not able and available for work. The regulations of this point are quite clear.

Under rule 871 IAC 24.24(4) “[b]efore 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 .... 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.” That rule goes on to specify that “[l]ack 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.” 871 IAC 24.24(4).

As rule 24.23(4) makes clear loss of transportation can render a claimant no longer available for work so long as that loss of transportation continues. We thus conclude that this Claimant is not available for work so long as the condition of a lack of transportation continues. By that same token, however, we must find under rule 24.24(4) that the Claimant cannot be disqualified for refusal of suitable work, since she was not available, and since lack of transportation by law is deemed to be good cause for refusal. The upshot of our decision is that the Claimant still is not collecting benefits, but now she can start collecting benefits again once she is again available for work, and she need not requalify by earning 10 times her weekly benefit amount.

The Decision portion of the Administrative Law Judge's is accordingly modified to say that "The representative May 22, 2017 decision (reference 02) finding that the Claimant had refused suitable work without good cause is reversed. The Claimant is still denied benefits for the weeks she was not able and available for work due to lack of transportation as indicated in the Reasoning And Conclusions Of Law.

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Kim D. Schmett

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Ashley Koopmans

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James M. Strohman

RRA/ss