

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANETTE G OHMAN
Claimant

APPEAL 21A-UI-16406-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLEUR PET HOSPITAL PC
Employer

OC: 03/22/20
Claimant: Appellant (4)

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:

Claimant filed an appeal from the July 14, 2021, (reference 01) unemployment insurance decision that denied benefits. Iowa Workforce Development mailed a notice of hearing to claimant's last address of record. The hearing was scheduled for September 16, 2021 but continued before any evidence was taken to allow claimant to receive the employer's exhibits. After proper notice, a telephone hearing was conducted on October 5, 2021. Claimant appeared personally. Employer appeared through Kristina LeFort, practice manager. Dr. Lisa Williams, DVM, also participated. Official notice was taken of administrative records. Employer Exhibits 1-6 were admitted.

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 April 27, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds Claimant worked for this employer on a part-time basis, and was paid on a commission basis based upon groomings booked. Claimant has some flexibility in setting her hours and schedule. Claimant was temporarily laid off in March 2020 due to the COVID-19 pandemic. Employer contacted claimant about returning to work effective April 27, 2021.

Upon securing a PPP loan, the employer notified claimant that it had four groomings ready for her (Employer Exhibit 3). Work was available to claimant effective April 27, 2021. At the time, employer had implemented additional safety protocol for COVID-19, which included curbside checking in/out of animals, masks and gloves being worn by staff, the disinfecting of dog leashes used, wiping down surfaces with disinfectant, and taking payments over the phone. Claimant was not responsible for retrieving pets from customers and her grooming station was

set up downstairs, away from the general practice. Claimant's human interaction would have been minimal.

At the hearing, the claimant expressed concern about COVID-19 safety protocols, as her husband was high risk if exposed to COVID-19. Claimant did not raise concerns about inadequate safety protocol at the employer facility but declined to return because she was nervous about the rising number of positive COVID-19 tests. Permanent separation ensued on June 22, 2020 when claimant notified the employer she would not return to the employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits effective April 27, 2020.

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 April 27, 2021. Employer took reasonable steps to protect claimant, including masks, sanitizing surfaces and no public interaction. Claimant's work space was downstairs from the general practice, further isolating her and limiting human 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.

DECISION:

The July 14, 2021, (reference 01) 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 April 27, 2020, 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.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

October 22, 2021
Decision Dated and Mailed

jlb/kmj