

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ASHLEY M BECHER**  
Claimant

**SEDONA STAFFING INC**  
Employer

**APPEAL 20A-UI-13259-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work  
Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available  
871 IAC 24.24(15)i – Suitable Work

**STATEMENT OF THE CASE:**

Sedona Staffing (employer) appealed a representative's October 20, 2020, decision (reference 02) that concluded Ashley Becher (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 17, 2020. The claimant participated personally. The employer participated by Colleen McGuinty, Unemployment Benefits Administrator.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was on assignment from February 3, 2020, through March 13, 2020, and from November 12, 2020, through December 4, 2020.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 29, 2020. The claimant's average weekly wage during her highest quarter of wages was \$392.95. She received unemployment insurance benefits from March 20, 2020, through

July 11, 2020. The claimant was approved for Pandemic Unemployment Assistance with an effective date of March 29, 2020.

On July 21, 2020, the employer offered the claimant a full-time job at Group O starting on July 29 2020. The job paid \$440.00 per week for forty hours per week. The job was offered during her seventeenth week of unemployment. The claimant refused the offer of work because she was volunteering from July 27, 2020, through July 31, 2020.

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

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

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 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.

The work was offered within seventeen weeks of the claimant's unemployment and was required to provide the claimant wages seventy-five percent of those paid to the claimant during the highest quarter of her base period. The evidence establishes that the claimant would have received at least seventy-five percent of her average weekly wages during her highest quarter of earnings. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was suitable work.

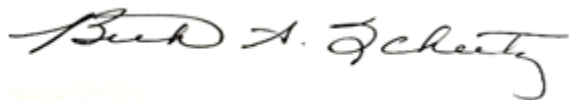
871 IAC 24.23(17) provides:

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees unreasonably limit their working hours, they are considered to be unavailable for work. The claimant limited her hours due to her volunteer schedule. The claimant is disqualified from receiving unemployment insurance benefits due to unavailability for work.

**DECISION:**

The representative's October 20, 2020, decision (reference 02) is reversed. The claimant refused an offer of suitable work. Benefits are denied as of July 19, 2020.



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Beth A. Scheetz  
Administrative Law Judge

January 4, 2021  
Decision Dated and Mailed

bas/mh