

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA R LINCOLN
Claimant

SFA INC
Employer

APPEAL 20A-UI-07769-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)A – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 6, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible to receive unemployment insurance benefits because she refused an offer of suitable work on March 15, 2020. The parties were properly notified of the hearing. A telephone hearing was held on August 28, 2020. The claimant, Angela R. Lincoln, participated personally and was represented by Attorney Robert J. Legislador. The employer, SFA Inc., participated through witness Sarah Ferreter. Claimant's Exhibit A was admitted. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her initial claim for unemployment insurance benefits with an effective date of March 15, 2020. Claimant was employed part-time from February 3, 2020 until March 20, 2020. She has permanently separated from employment with this employer. Claimant worked as a tax preparer. Her normal working hours were Monday through Thursday 9:00 am to 3:00 p.m. with occasional Friday and Saturdays.

Claimant was scheduled to be off of work on vacation from March 16, 2020 through March 20, 2020. She was scheduled to return to work from vacation on March 23, 2020. Claimant has two minor children at home whom she cares for. The school that the claimant's minor children attends closed due to the COVID 19 pandemic. Claimant did not have childcare arrangements for her children and needed to be home with them. Claimant's children continue to be home with her and she does not have other childcare arrangements for them. Her children's school is scheduled to resume in September of 2020.

The issue of the permanent separation from employment has not been adjudicated by the Benefits Bureau of Iowa Workforce Development. That issue shall be remanded to the Benefits Bureau with notice and opportunity to be heard provided to both parties.

Claimant's administrative records establish that she has received unemployment insurance benefits funded by the State of Iowa and Federal Pandemic Unemployment Compensation benefits pursuant to PL 116-136 Section 2104(B). Claimant has not filed an application for Federal Pandemic Unemployment Assistance pursuant to PL 116-136 Section 2102.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

In order to be eligible for regular unemployment insurance benefits funded by the State of Iowa, the claimant must first establish that she is able to and available for work each week she is filing weekly-continued claims for benefits.

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.

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 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

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.

In this case, the claimant has been permanently separated from employment and that issue must be initially addressed by the Benefits Bureau of Iowa Workforce Development. As such, it will be remanded.

Further, the claimant has not been available for work due to lack of child care. She has been unavailable for work because of this reason since March 15, 2020 and continuing. Disqualifications based upon a claimant failing to be able to and available for work are made on a week-by-week basis. Disqualifications made for a claimant refusing an offer of work require the individual to work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount.

In this case, the claimant is not disqualified for refusing an offer of work, but is not eligible for the period of time that she has been unavailable for work due to lack of childcare, which was effective March 15, 2020. Benefits are denied effective March 15, 2020 and are withheld until such time as claimant makes herself available for work.

DECISION:

The July 6, 2020 (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was not available for work as she had not made arrangements for child care. No disqualification based upon a refusal of offer of work is imposed. Benefits are withheld effective March 15, 2020, due to her unavailability, and continuing until such time as the claimant makes herself available for work.

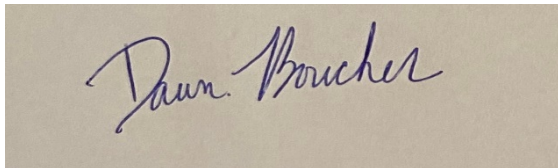
REMAND:

The issue of whether the claimant's permanent separation from employment was disqualifying shall be remanded to the Benefits Bureau for an initial investigation and determination, with notice and opportunity to be heard provided to both parties.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.



Dawn Boucher
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed