

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ASHLEY GRAVES**  
Claimant

**APPEAL 21A-UI-16070-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED ROCK RESTAURANT MGMT CORP**  
Employer

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

Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.19(38) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

On July 20, 2021, Ashley Graves (claimant/appellant) filed an appeal from the July 13, 2021, reference 01, unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2021, at 8:00 a.m. The claimant participated. The employer participated through Manager Deb Baetz. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether the claimant refused an offer of work.  
Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer, Red Rock Restaurant Management Corporation, as a part-time sandwich artist on January 5, 2018. The claimant's hours vary according to the customer demand. The claimant's hourly wage is \$9.25.

The claimant filed an initial claim for unemployment insurance benefits effective March 15, 2020. Claimant's weekly benefit amount is \$129.00.

On March 17, 2020, the employer reduced the claimant's hours due to Governor Kim Reynolds proclamation regarding the Covid19 pandemic.

On April 17, 2020, the employer informed the claimant and other staff that they would start scheduling them more hours due to increased demand. The claimant remained on reduced hours because she was caring for her mother, who was on hospice at the time.

During the summer of 2020, the claimant informed Manager Deb Baetz that she planned to undergo breast reduction surgery on August 31, 2020. The administrative record DBRO shows the claimant worked a full schedule for the week ending August 29, 2020. Both parties testified that no offer of work was conveyed to claimant on August 31, 2020, rather she was undergoing the surgery.

From August 31, 2020 to the week ending January 2, 2021, the claimant was recovering from the breast reduction surgery. The claimant was still experiencing swelling and did not feel comfortable enough to work. Furthermore, the claimant was married in Colorado and went on her honeymoon from September 26, 2020 to October 4, 2020.

The claimant returned to work with reduced hours for the week ending January 9, 2021. The claimant was still too ill from the surgery to work her full schedule. She remained on reduced hours until the week ending March 13, 2021. The claimant did not make weekly claims for weeks occurring after that date.

On April 15, 2021, the claimant voluntarily resigned from the employer.

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

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a job offer on August 31, 2020. The administrative law judge further concludes the claimant was not able and available for work effective August 31, 2020.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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. R. 871-24.23 (1), (10), (25), (26), and (35) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The record does not support the notion the claimant refused an offer of work on August 31, 2020. Indeed, the claimant had worked the entire previous week. As a result, the penalty regarding whether the claimant has to earn ten times her weekly benefit amount under Iowa Code section 96.5(3)a is inapplicable.

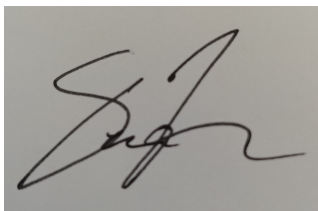
Rather, the claimant had a breast reduction surgery and remained on leave until the week ending January 9, 2021, due to her physician's restrictions, her recovery from symptoms, and her marriage and honeymoon. These reasons are disqualifying under Iowa Admin. R. 871-24.23 (1), (10), (25), and (35). Benefits are denied.

**DECISION:**

The July 13, 2021, reference 01, unemployment insurance decision denying benefits was modified in favor of the appellant. The claimant has not refused an offer of work. As a result, the claimant does not have to earn ten times her weekly benefit amount to become eligible again. However, the claimant was not able and available for the period in question here and is not eligible for benefits. Benefits are denied.

**REMAND:**

The administrative law judge is remanding to the Benefits Bureau the issue of whether the claimant has been overpaid regular unemployment insurance and Federal Pandemic Unemployment Compensation benefits.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

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September 16, 2021  
Decision Dated and Mailed

smn/kmj