

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA A DAUGHERTY**  
Claimant

**MATT'S GRILL & BAR INC**  
Employer

**APPEAL 21A-UI-22019-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(3)A – Offers of Work / Work Refusal  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On September 10, 2021, employer Matt's Grill & Bar, Inc., filed an appeal from the September 1, 2021 (reference 03) unemployment insurance decision that found claimant was eligible for unemployment insurance benefits as no offer of work was made on June 11, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Friday, December 3, 2021. The claimant, Jessica A. Daugherty, did not call into the hearing and participate. The employer, Matt's Grill & Bar, Inc., participated through witness Matt Wildeboer, Owner; and was represented by attorney Gary Papenheim. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was a suitable offer of work made to the claimant?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Matt's Grill & Bar, Inc., on January 28, 2020. She worked for this employer in a part-time position as a server. Claimant last worked a shift on March 10, 2020.

On Tuesday, March 17, Wildeboer contacted claimant via text to let her know that he would not be needing her "for awhile," as the grill and bar was closing its in-person dining due to COVID-19. Wildeboer told claimant she would not be working "until further notice."

On June 11, 2020, Wildeboer sent claimant a text message stating: "This is Matt. Did you want to start working again?" Claimant did not respond to this text message. Wildeboer did not send any follow-up communication to provide concrete details about what this offer of work would entail or whether claimant would be able to return to the hours she had been working before the pandemic. Wildeboer noted during testimony that he is not sure he had correct contact information for the claimant, as both her telephone number and address have changed since she was employed with him.

The administrative record reflects that claimant was not filing weekly continued claims for benefits at the time this message was sent. Claimant's wage records with the agency indicate she was employed with another employer at the time Wildeboer sent his text message.

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

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to the claimant. Benefits are allowed.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

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(1)a provides:

(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.

In this case, the administrative law judge is not convinced that the employer made a bona fide offer of work to the claimant. The employer presented doubt as to whether claimant received the text message Wildeboer sent, as claimant's telephone number changed following her employment. Additionally, Wildeboer's text message contained no specific terms of employment (such as a schedule, a rate of pay, or a number of hours per week) that would indicate a true job offer was being made. Based on the evidence in the record, the administrative law judge finds the employer did not make an actual offer of work to the claimant. Therefore, benefits are allowed, provided claimant is otherwise eligible.

The issue of whether claimant has requalified for benefits since separating from this employer is remanded to the Benefits Bureau for determination.

**DECISION:**

The September 1, 2021 (reference 03) unemployment insurance decision is affirmed. The employer failed to make an actual offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:**

The issue of whether claimant has requalified for benefits since separating from this employer is remanded to the Benefits Bureau for determination.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

December 10, 2021  
Decision Dated and Mailed

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