

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

NICHOLAS MARKEY
Claimant

APPEAL 22A-UI-13732-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 05/15/22
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(20) – Waiting for Specific Employer

STATEMENT OF THE CASE:

On June 8, 2022, Nicholas Markey (claimant/appellant) filed an appeal from the June 6, 2022, reference 01, unemployment insurance decision that concluded he was not able to or available for work. A telephone hearing was held at on July 22, 2022 pursuant to due notice. The claimant, Nicholas Markey, participated and testified. The employer Team Staffing Solutions, Inc., participated through Sarah Fiedler, Human Resources Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work?
Did the claimant unduly limit his job search by waiting on a specific employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer on assignment with Scott's Miracle Gro, in March 2020. Claimant last worked as a full-time laborer. Claimant was separated from employment on May 13, 2022, when his assignment with Scott's Miracle Gro ended due to lack of work. Employer did offer the claimant other work but claimant refused as he was waiting on a return to work notification from Scotts. The employer testified that their current contract with Scotts has ended and they are not certain if Scotts' will utilize their company again to fill future labor needs.

The claimant's Group Code is currently reflected as a 3.

The issue of whether the claimant requested or was offered a suitable offer of work after his assignment with Scott's Miracle Gro has not been investigated or determined by IWD Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge finds

Iowa Code § 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".

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The claimant is a temporary worker employed by a temporary employment agency. When his current long term assignment ended at Scott's Miracle-Gro he was not within his right to refuse other suitable offers of work from his employment agency in order to be called back to work at Scott's Miracle Gro. The claimant's refusal to consider or accept other offers of work in order to be called back to Scotts is disqualifying. Benefits are denied effective May 15, 2022.

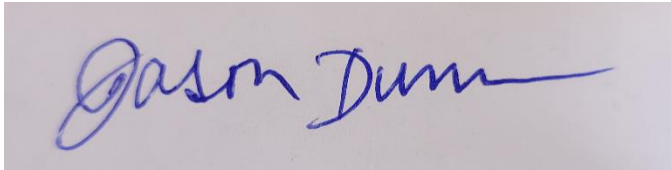
DECISION:

The June 6, 2022, reference 01, unemployment insurance decision is affirmed. The claimant is not able to and available for work effective May 15, 2022, due to his refusal to only accept work from his former job assignment, Scott's Miracle-Gro.

REMAND:

The issue of whether the claimant requested an additional assignment or refused an offer of a suitable work assignment if one was offered by his employer is remanded to the IWD benefits bureau for review and determination.

The issue of whether the claimant's Group Code should be changed from a Group Code 3 to a Group Code 6 is also remanded to the IWD benefits bureau for review and determination.



Jason Dunn
Administrative Law Judge

September 21, 2022
Decision Dated and Mailed

jd/ar

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.