

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURTIS LOGGINS

Claimant

APPEAL 19A-UI-08989-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 09/29/19

Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Failure to Accept Work

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On November 14, 2019, the employer filed an appeal from the November 5, 2019, (reference 05) unemployment insurance decision that allowed benefits based on claimant's availability for work effective October 20, 2019. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2019. Claimant did not register for the hearing and did not participate. Employer participated through staffing supervisor Vicky Matthias.

ISSUES:

Did claimant refusal a suitable offer of work on November 11, 2019?

Is the claimant able to and available for work effective October 20, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 26, 2019, claimant informed employer he could not work due to a non-work related injury. On October 21, 2019, claimant brought in a doctor's note releasing him to work without restrictions.

On November 11, 2019, employer offered claimant an assignment via telephone. The offer was for a full-time labor position in Waterloo, Iowa, paying \$12.00 per hour. This is **comparable to the prevailing rate of pay for similar work in the Waterloo area**. Claimant's average weekly wage is \$728.15. The offer was made in the seventh week of unemployment. Employer needed claimant to start the same day. Claimant could not start that day because he had a physical therapy appointment and the physical therapist informed claimant he could not work immediately after the appointment, but that he could begin work the next day. Employer informed claimant it needed an employee who could start work on November 11, 2019, and it could not hold the job for him.

REASONING AND CONCLUSIONS OF LAW:

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. First, was the offer for suitable work? And if so, did the claimant have a good cause for refusal? Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was made and that it was suitable. Iowa Code § 96.5(3)a(1) provides:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

If the offer was suitable, the claimant has the burden to establish the offer was refused for “good cause.” “Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious.” *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In this case, the offer was not suitable as the weekly wage at \$12.00 per hour amounts to \$480.00 per week. Because the offer of work was made in claimant's seventh week of

unemployment, a suitable offer of employment must meet or exceed \$546.11 per week. In this case it did not. Therefore, the offer was not for suitable work.

The next issue is whether claimant is considered not able to or available for work considering his non-related work injury.

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 Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

In this case, claimant was released by his medical provider to return to work without restrictions effective October 21, 2019. Although claimant was unable to work directly after a physical therapy appointment on November 11, 2019, he was able to and available to work the very next day and was able to work the major portion of the workweek.

Claimant is considered able and available for work effective October 21, 2019.

DECISION:

The November 5, 2019, (reference 05) decision is affirmed. The offer of work on November 11, 2019, was not suitable and claimant is able to and available for work effective October 20, 2019. Benefits are allowed effective October 20, 2019, provided claimant is otherwise eligible.



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December 12, 2019
Decision Dated and Mailed

cal/scn