

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON P NILES

Claimant

APPEAL 19A-UI-00156-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHEAST IOWA WHITEWASHING INC

Employer

OC: 12/02/18

Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 3, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that he has refused recall to suitable work. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2019. Claimant participated and testified. Employer participated through owner Dion Bumgardner.

ISSUES:

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: Claimant is currently employed with this employer as pest control operator. Claimant works full-time hours during the busy season, usually from March until sometime in November. When things slow down for the season claimant is temporarily laid off, but works as work is available. Claimant was laid off his regular full-time hours on November 20, 2018. He filed his original claim for benefits the week starting December 2, 2018. On November 29, 2018, Bumgardner called claimant and left a message that work was available beginning December 3, 2018. Claimant initially forgot about the call and by the time he remembered he could not find childcare. Claimant was able to arrange for childcare and return to work a majority of the week of December 16, 2018. Claimant has not declined any work since the November 29 offer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work for the two-week period ending December 15, 2018.

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 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(2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Claimant is still an employee of the employer. An individual claiming benefits has the burden of proof that they are able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was temporarily laid off November 20, 2018, but was recalled back to work beginning December 3, 2018. Claimant was not able to return to work at the time because he did not have childcare. Claimant did return to work two weeks

later, the week beginning December 16, 2018. Therefore, because claimant did not make himself available for work with the employer for the two-week period ending December 15, 2018, benefits are withheld for that time period. Benefits are allowed effective December 16, 2018, as claimant made himself available for work.

DECISION:

The January 3, 2019, (reference 01) decision is modified in favor of the appellant. Claimant was unavailable for work for the two-week period ending December 15, 2018 and benefits are withheld benefits are withheld for that two-week period. Benefits are allowed beginning the week of December 16, 2018, when claimant made himself available for work.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs