

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE M PARISH
Claimant

BLACKHAWK SERVICES CORP
Employer

APPEAL 22A-UI-01483-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/21/21
Claimant: Respondent (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)a – Failure to Apply for or Accept Suitable Offer of Work

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the December 14, 2021 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits because no actual offer of work was made on November 8, 2021. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2022. The claimant did not participate. The employer participated through witness Laurey Gray and was represented by Teresa Pinnell. Employer's Exhibits A and B were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant able to and available for work?
Did the claimant fail to apply for or accept a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed for this employer from June 29, 2021 through November 2, 2021 as a full-time production laborer. He filed a claim for unemployment insurance benefits effective November 21, 2021. No adjudication regarding his separation from employment has been made by the Benefits Bureau of Iowa Workforce Development.

On November 8, 2021, Ms. Gray spoke to the claimant and asked why he stopped reporting to work. He advised that he never worked for this employer and inquired why she was calling him. Claimant did not return to work for the employer after November 2, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 Code § 96.4(3) provides:

Required Findings.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). **Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work** and not unemployed for failing to bump a fellow employee with less seniority. **If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work.** In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

(emphasis added).

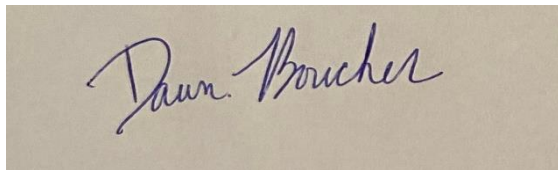
The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2). In this case, the claimant failed to provide credible evidence that he has been able to and available for work effective November 21, 2021. Therefore, the claimant is not disqualified for refusing an offer of work but is not eligible for regular unemployment insurance benefits funded by the State of Iowa effective November 21, 2021 as he has failed to establish he has been able to and available for work. Regular unemployment insurance benefits are denied effective November 21, 2021 and continuing due to the claimant not being able to and available for work.

DECISION:

The December 14, 2021 (reference 02) unemployment insurance decision is modified in favor of the appellant/employer. The claimant failed to establish that he has been able to and available for work. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective November 21, 2021 and continuing until such time as he establishes he is able to and available for work.

REMAND:

The separation from employment issue delineated in the findings of fact is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

February 24, 2022
Decision Dated and Mailed

db/db