

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RENEE SMITH
Claimant

APPEAL 21A-UI-13997-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEISURE SERVICE
Employer

**OC: 03/28/21
Claimant: Respondent (5)**

Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available
871 IAC 24.24(15)i – Suitable Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the June 10, 2021, (reference 01) unemployment insurance decision that granted benefits concluding she served her temporary term of employment until its termination on March 28, 2021. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2021. Claimant participated and testified. The employer participated through Human Resources Manager Cheryl Huddleston. Although Facilities / Project Manager Travis Nichols was registered as a witness for the employer, he did not participate in the hearing. Both parties waived that the hearing notice did not properly recognize this case as a work refusal case.

ISSUE:

- The issue is whether the claimant refused suitable work and whether the claimant is able and available for work?
- Whether the claimant has been overpaid for the benefits?
- Has the claimant been separated from employment? Is the claimant's separation disqualifying?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 28, 2021. The claimant's highest quarter of wages during her base period was the fourth quarter of 2019, during which insured wages totaled \$8,706.00. Based on the claimant's highest quarter of wages during her base period her average weekly wage is \$669.72.

The claimant was hired on as a seasonal full-time garbage truck driver for the employer, the City of Cedar Falls Leisure Services Department on May 4, 2020. Travis Nichols was the hiring manager for the position. This job offer was contingent on a drug screen. The claimant was directed to take the drug screen that same day.

On March 19, 2021, the claimant filled out an application for the seasonal full-time garbage truck driver position she had worked in the previous year. She wrote on her application that she would like the start on April 16, 2021.

On March 23, 2021, the employer offered the claimant a full-time job seasonal garbage truck driver position. The rate of pay was \$13.00. The claimant accepted the offer. The position was conditioned on a drug screen. Mr. Nichols told the claimant she would let her know when the employer was ready to do the drug screen. Mr. Nichols said they were going to start the first or second week of May 2021. Mr. Nichols did not ever instruct her to conduct the drug screen.

After accepting the offer, the claimant called Iowa Workforce Development's claims department and spoke to a representative of the agency. The representative told her that she needed to continue to do work searches.

On April 9, 2021, the claimant suffered from an ankle injury. The claimant's medical provider told her that she would be able to bear weight on the ankle after April 15, 2021.

On April 26, 2021, the claimant told Mr. Nichols that she had several interviews with potential employers. In that context, the claimant told Mr. Nichols she may have to take these more lucrative offers prior to his May 2021 start time.

On April 27, 2021, the claimant had a video interview with the representatives of Principal Financial.

On May 3, 2021, the claimant had an in-person interview with Principal Financial.

On May 4, 2021, Principal Financial offered the claimant a position paying \$19.35 per hour. The claimant worked in this position..

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not separate from employment in March 2021. The administrative law judge further concludes the claimant did not refuse an offer of suitable work. Benefits are granted. Since benefits are granted, the overpayment issue is moot.

The administrative law judge concludes the claimant did not separate from employment on March 28, 2021. The claimant was not hired yet by the employer. Rather this case is properly analyzed as a work refusal case.

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.

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 96.1A, 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 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 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.

Iowa Admin. Code r. 871-24.24(7) provides:

- (7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

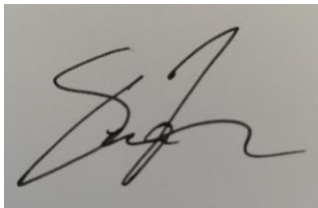
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. This is because the claimant provided clear, consistent, and credible first-hand testimony supporting her claim.

Mr. Nichols spoke with the claimant on March 23, 2021. The claimant has succeeded in proving she did not refuse work for three reasons. (1) No offer of work was made to the claimant because it was conditioned on a drug screen. The claimant is qualified to receive benefits because no offer of suitable work was made to the claimant. (2) The claimant also did not refuse work, she merely said that she may be successful in securing other work. (3) Before Mr. Nichols got back to her about the drug screen, the claimant was gainfully employed with Principal Financial.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The employer did not provide documentation or first-hand testimony at the hearing. Therefore, it did not provide sufficient evidence of an offer of work to rebut the claimant's denial of said offer. There was no evidence of any restriction or limitation on employability. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 10, 2021, (reference 01) is modified with no change in effect. The claimant did not separate from employment on March 28, 2021. Nor did the claimant refuse an offer of work. Since the claimant is entitled to benefits, the overpayment issue is moot. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

August 13, 2021
Decision Dated and Mailed

smn/lj