

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUSTIN W NICHOLSON
Claimant

HENSON HOME SERVICES INC
Employer

APPEAL 20A-UI-13225-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (4R)

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Code § 96.5(3)a – Refusal of Offer or Recall to Work

STATEMENT OF THE CASE:

On August 22, 2020, the employer filed an appeal from the August 13, 2020 (reference 04) unemployment insurance decision that allowed benefits to the claimant based upon no offer of work being made. The parties were properly notified about the hearing. A telephone hearing was held on December 17, 2020. Claimant did not participate. The employer, Henson Home Services LLC, participated through witness Lucas Henson. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Did the claimant refuse 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 worked for the employer beginning November 13, 2019. He worked part-time as a maintenance technician. His last day physically worked on the job was March 27, 2020. Claimant was not available for work on April 1, 2, or 3, 2020. A permanent separation from employment occurred.

No specific offer of work was made to the claimant, as he was a continuous part-time employee with this employer until April of 2020. Claimant was not available to work for the employer due to personal reasons.

The issue of whether the claimant's separation from employment was disqualifying has not yet been adjudicated by the Benefits Bureau of Iowa Workforce Development. The separation from employment issue shall be remanded for an investigation and determination, with notice and opportunity to be heard provided to both parties. The issue of whether the claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa is remanded to the Benefits Bureau for an investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

In order to be eligible for benefits, the claimant must first establish that he is able to and available for work.

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 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(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).

In this case, the reason for the claimant's failure to work was for personal reasons. As such, the claimant was not able to or available for work, pursuant to Iowa Code § 96.4(3). 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 April 5, 2020 as he has failed to establish that he was able to and available for work, as is his burden. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 5, 2020 and are withheld until such time as claimant is able to and available for work.

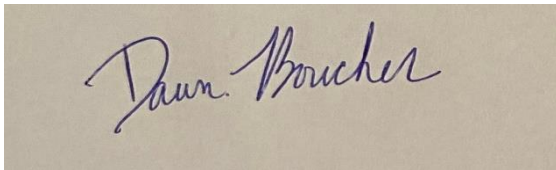
DECISION:

The August 13, 2020 (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to and available for work. No disqualification based upon a refusal of offer of work is imposed. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 5, 2020, due to claimant not being 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. The issue of whether the claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa is remanded to the Benefits Bureau for an investigation and determination.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

December 30, 2020
Decision Dated and Mailed

db/mh

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.