

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ERIC HRABAK**

Claimant

**APPEAL 17A-UI-05798-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEUHAUS FAMILY FUNERAL SERVICE**

Employer

**OC: 09/27/15**

**Claimant: Appellant (2)**

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:**

The claimant filed an appeal from the May 24, 2017, (reference 03) unemployment insurance decision that denied benefits based upon his refusal to accept suitable work. The parties were properly notified of the hearing. A telephone hearing was held on June 20, 2017. The claimant participated and testified. The employer participated through attorney Jennifer Zahradnik and owners Andrew and Casey Neuhaus. Claimant's Exhibits A and B and employer's Exhibits 1 through 3 were received into evidence. Official notice was taken of claimant's wage records for the period of time in question.

**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?

Is the claimant able to work and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant via certified mail. (Exhibit 1). The offer was sent on October 29, 2015 and received by claimant on November 2, 2015. The offer included the following terms: claimant would live within 25 miles of its location in Belle Plaine, Iowa, would operate and manager day to day operations as needed, work on-call every other night and weekend, and be responsible for daily delivery of goods and services to families. The wage offered for the job is \$40,000 annually, for an average of \$769.23 weekly. The employer testified it was aware at the time the offer was made that claimant lived approximately 45 miles away in Cedar Rapids, Iowa. (Exhibit 2). Claimant's highest quarters of wages in his base period were \$13,244.00 from the second and fourth quarters of 2014 and second quarter of 2015. Claimant's average weekly wage during these times was \$1,018.77. The offer was made in the fifth week of unemployment, but not received by the claimant until the sixth week of unemployment. Claimant did not accept the offer of work from the employer. Claimant did not

accept the offer of work because he was no longer living in that area and had accepted employment elsewhere, with a start date of November 9, 2015. Claimant's new employment was in the area of his residence. Claimant testified that while he had accepted employment, he continued to apply for work until he actually started. One of those applications resulted in another offer of work with the same start date.

Testimony was also provided indicating claimant was a full-time student until October 2015. Claimant testified he had both worked and gone to school full-time for the year and a half prior to his graduation. Claimant's wage records for his base period show full-time wages while he was also attending school. The employer submitted a document from June 30, 2014, from the employer's accountant advising them that if claimant was not working full-time hours while attending school, his pay should be adjusted accordingly. (Exhibit 3). The letter lists claimant's salary for 2010 through 2013 and indicates the author believes full-time schooling would not allow for full-time work hours. The letter recommends paying claimant on an hourly basis beginning July 1, 2014. No information was presented to indicate whether this suggestion was followed. Claimant testified he was indeed working full-time hours during the time in question and that the author of the document would have no knowledge of his day-to-day work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant declined an offer of work for good cause reasons and was otherwise able to and available for work.

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 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.

Here, the employer sent claimant a certified letter on October 29, 2015, offering him employment. If employer is unable to make personal contact to extend an offer of work, a written offer with sufficient detail may be sent by certified mail with return receipt requested. The offer was made in the fifth week of unemployment, though it was not received until the sixth week of unemployment. The wages offered do not meet the formula found in the unemployment insurance law for suitable work during the first five weeks of employment, though they would meet the formula for the sixth through twelfth week of unemployment. Claimant did not accept the offer as it was approximately 45 miles from where he lived and he had already accepted other suitable work within his area.

Whether the offer was suitable based on the wages offered is questionable as the offer was made and received in different weeks of unemployment. Even assuming the offer was suitable, claimant had a good cause reason for the failure to accept it. The employer required the claimant to live within 25 miles of its location, which it knew he did not. Claimant lived approximately 45 miles away in Cedar Rapids. As claimant did not reside in the area where the work was available, his refusal was for good cause.

The next issue that must be decided is whether claimant was otherwise able and available for work.

Iowa Code § 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. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Claimant offered credible testimony that, while he had been offered and accepted employment with a specific employer, he was also continuing to make at least two work searches weekly. Claimant further testified that these searches resulted in another offer of employment, which he declined, as the start date was the same as the offer he had already accepted.

Iowa Admin. Code r. 871-24.23(5) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Claimant testified he was working and going to school full time throughout his base period. Claimant's wage records support his testimony. The employer's document from June of 2014, is insufficient to contradict this testimony. The document advises the employer that if claimant is not working 40 hours per week, he should not be paid as such and should move to an hourly rate. While the document implies that the author believes claimant has not been working 40 hours per week, it appears the sole basis for this assumption is that one cannot work and go to school full time. It should also be noted that the only specific wages referenced in the document are his wages from 2010 through 2013, none of which are included in claimant's base period. In the absence of any evidence to the contrary, claimant's testimony as supported by his wage record, is credible. Claimant has shown that his availability, as it relates to his status as a full-

time student, was consistent with that of his base period. Claimant testified there was nothing else affecting his ability to or availability for work during this time.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Claimant began full-time work on November 9, 2015 and was therefore not available for other work as of that date. However, no claim for benefits was made after November 7, 2015.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. For all the reasons outlined above, claimant was able and available for work for the time period in question.

**DECISION:**

The May 24, 2017, (reference 03) decision is reversed. Claimant did refuse an offer of work, but his refusal was for good cause reasons. Claimant was able to and available for work for period of time in question. Benefits are allowed for this time period, provided claimant is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs