

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEANNA C SHEA**  
Claimant

**“TROSTEL’S LLC**  
Employer

**APPEAL 21A-UI-19206-AR-T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**OC: 03/15/20  
Claimant: Appellant (2)**

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Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant, Deanna C. Shea, filed an appeal from the August 10, 2021, (reference 04) unemployment insurance decision that denied benefits based upon refusing an offer of suitable work. After due notice was issued, a hearing was held by telephone conference call on December 17, 2021, and was consolidated with the hearing for appeal number 21A-UI-19205-AR-T. Claimant participated personally. Employer participated through Suzanne Summy. Department’s Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

This amended decision is being issued solely to clarify that this decision reverses the decision of the representative to deny benefits.

**ISSUES:**

Is the claimant’s appeal timely?  
Was a suitable offer of work made to the claimant?  
Is claimant able to and available for work during the period in question?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for this employer beginning in mid-2017. Initially, she was a server, with the standard server rate of pay, plus tips. Eventually, in winter 2019, she began part-time duties as operations manager. When she performed the duties of the operations manager, she was paid \$12.00 per hour, seven hours per day. In very early 2020, claimant took over duties as a full-time operations manager. In that role, she was paid \$20.00 per hour.

In March 2020, the governor instituted a disaster proclamation that forced the restaurant to close. The restaurant was being sold in the near future regardless of the COVID-19 pandemic, so it never reopened and was closed permanently.

In approximately June 2020, the manager from this employer called claimant and inquired whether she would be interested in working a Greenbriar, another of the employer's restaurants. No other details were given during this call. Claimant said the employer should keep her in mind for future employment, but at that time she was in real estate school. Claimant explained that real estate school took one week of full-time study, and the manager happened to call during claimant's week of school.

The week of June 26, 2020, the manager called claimant again and offered claimant part-time lunch shifts as a server at Greenbriar. Details regarding the rate of pay and specific hours were not discussed. Claimant explained that such work would not have been enough to cover her bills, so she declined to consider the proposal.

A disqualification decision was mailed to claimant's last known address of record on August 10, 2021. She likely received the decision within 10 days but was traveling for work when the decision arrived. Claimant submitted her appeal in this matter as soon as she returned home and realized she had received it. She submitted her appeal on August 30, 2021, a Monday.

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

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

In this case, claimant appealed the decision as soon as she discovered it, after being away from home on a work-related trip. The claimant had articulated reasonable cause for the delay in appealing. The appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the no offer of work was actually communicated to claimant.

Iowa Code section 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.

In this case, the administrative law judge is not convinced that the employer made a bona fide offer of work to the claimant. The manager's contact with claimant contained no specific terms of employment, such as a firm schedule, rate of pay, or number of hours per week, that would indicate a true job offer was being made. Based on the evidence in the record, the administrative law judge finds the employer did not make an actual offer of work to the claimant.

The next question to be considered is whether claimant was able to and available for work during the period in question. For the reasons that follow, the administrative law judge concludes she was.

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:

Benefits 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(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.

The decision at issue determined that claimant was in school to such an extent that she was removed from the labor force. The evidence does not support such a conclusion. Claimant was otherwise able to and available for work for the period in question and was not in school to such an extent that it limited her availability.

**DECISION:**

The August 10, 2021 (reference 04) unemployment insurance decision is reversed. The claimant's appeal is accepted as timely. The employer failed to make an actual offer of work. The claimant was able to and available for work during the period in question. Benefits are allowed, provided the claimant is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

January 28, 2022  
Decision Dated and Mailed

ar/mh