

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE K SCHMITH
Claimant

HUMACH LLC
Employer

APPEAL 20A-UI-08111-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On July 9, 2020, Diane Schmith (claimant/appellant) filed an appeal from the July 1, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 25, 2020, based on a finding that claimant refused recall to suitable work with employer.

After due notice was issued, a telephone conference hearing was held on August 21, 2020. Claimant participated personally. Employer participated by HR Generalist Jenni Bauer.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Did the claimant refuse to apply for or accept an offer of suitable work?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer March 13, 2014. Claimant last performed work for employer on March 25, 2020. On that date, employer closed its office due to the pandemic and offered claimant and other employees the opportunity to continue working remotely. Claimant declined to do so.

On April 10, Bauer sent a letter to claimant by mail and email, informing her that work would not be available at the office in the near future but that telework continued to be available. It further informed claimant that failure to accept telework would be considered a refusal of work and voluntary resignation. Claimant contacted Bauer on April 13. Claimant told Bauer she was declining telework because she thought her pet cockatoo would be too loud to work from home. Claimant and Bauer then discussed what would happen with her benefits, due to her refusal to return to work. The telework would have been the same work, at the same pay, for the same hours as claimant was working prior to her layoff.

Claimant heard from a coworker that she had been recorded and “yelled at” by employer due to noise in her home while she was teleworking. Claimant did not wish to risk being reprimanded by employer due to noise created by her bird. Claimant believed that employer required total quiet in employees’ homes while they were teleworking. However, Bauer testified that employee expected there would be some noise issues with employees working from home and that she is unaware of any employees being terminated for that reason since telework began.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 1, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 25, 2020, based on a finding that claimant refused recall to suitable work with employer is AFFIRMED.

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(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.*

The administrative law judge finds Bauer's testimony was more reliable than claimant's. Factual disputes were settled accordingly. This finding was made for several reasons, set forth below.

Claimant initially stated she had received the April 10, 2020 letter from Bauer, and did not object to it being admitted as an exhibit. However, she later testified that she had not received that letter or the email from Bauer containing the same information. Notably, she stated she does not have issues with receiving her mail. Claimant testified she had, however, received an email around that time about returning to work, which prompted her to call in on April 13 and discuss with Bauer returning to work. Claimant's testimony in this area was inconsistent and difficult to follow, while Bauer's was clear and consistent.

Claimant also testified she had no idea that if she did not return to work she would be considered to have refused work and/or resigned. She further testified there was no discussion about her benefits during that call with Bauer. On the other hand, Bauer testified she clearly remembered the call and claimant had asked questions during that call about her benefits continuing. This is a clear indication that claimant had received the letter and/or email or was otherwise aware that she would be considered to have refused work and/or resigned if she did not return to work.

Finally, claimant testified she had no further contact with employer until June 1, when she called after learning from a former coworker that the office was not going to reopen. She also testified she received no communication about her benefits ending. On the other hand, Bauer credibly testified claimant would have received that information because her benefits would have ended at the end of April. While whether claimant had further communication with employer or received letters regarding her benefits ending is not directly relevant to the issues here, the administrative law judge finds this again tends to show claimant's recounting of events is not reliable.

Employer twice offered claimant the opportunity to continue the same work, at the same pay, for the same hours as claimant was working prior to her layoff. The only difference was that this work would be remote rather than at the office. These were bona fide, suitable offers of work made during the current claim year and claimant did not have a good cause reason for refusing them. While the administrative law judge understands claimant's concern that her cockatoo may have been disruptive to her work and lead to discipline or discharge, claimant's assumption that this would be the case is not a good cause reason for refusing work. Benefits must be denied.

DECISION:

The July 1, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 25, 2020, based on a finding that claimant refused recall to suitable work with employer is **AFFIRMED**. Benefits are denied. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 26, 2020

Decision Dated and Mailed

abd/sam

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.