

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHERYL F SHIPLEY**  
Claimant

**BURLINGTON COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 21A-UI-14745-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21**  
**Claimant: Appellant (1)**

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/appellant, Cheryl F. Shipley, filed an appeal from the June 23, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 10, 2021. The hearing was held with Appeal 21A-UI-14546-JC-T. The claimant participated personally. The employer participated through Julia Dichraff.

The administrative law judge took official notice of the administrative records. Claimant Exhibits 1-3 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to work and available for work effective August 20, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment in 2018. In March 2020, claimant was employed in two capacities: She was a substitute teacher for the district, and also a part-time teacher in the employer’s after school program. Both positions were during the academic school year only. Claimant last performed work in March 2020 when Governor Reynolds issued an emergency proclamation which closed schools for the remainder of the semester due to COVID-19. Claimant’s work had been in-person and not performed virtually.

On July 29, 2020, employer notified claimant and employees of in-person training for the employer’s PIECES program (See Department Exhibit D-1). Claimant was allowed to

participate virtually August 10-13 but employer informed claimant the program and training would proceed in person. Claimant believed based upon prior communications that the program would be virtual.

Claimant declined to return to substitute teaching or the PIECES program, since neither program was virtual and required claimant to participate in-person. Claimant declined in-person employment because of concerns with COVID-19, and to care for her adult son who is high risk if exposed. Employer had work available.

Claimant did not work the 2020-2021 school year. She remains active as a substitute teacher on the employer's list of available substitutes, if she wants to accept assignments by way of the Frontline system or text messages. Because claimant did not work for over a year at the Pieces program, she would need to reapply for a position if interested.

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

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for benefits effective August 20, 2020.

A claimant who refuses recall to suitable employment without good cause is disqualified for unemployment insurance benefits until the claimant works in and is paid wages for insured work equal to 10 times the claimant's weekly benefit amount. Iowa Code section 96.5(3)(a). The work in question was suitable. The employer was merely recalling claimant to the same work under the same conditions that had been in place prior to the temporary layoff.

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.

In this instance, the offer of recall and then alleged refusal occurred after claimant established her claim for benefits and during a period when her claim was active.

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.

The crux of this case is not a work refusal issue, but instead a question of whether claimant was available for work effective August 20, 2020 when she refused a recall to work. A claimant is not eligible for benefits during any claim week during which the claimant fails to demonstrate that the claimant is able to work and available for insured work. Iowa Code section 96.4(3).

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part, as follows:

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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

For a totally unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

In this case, claimant's employment both as a substitute teacher and PIECES teacher were in-person positions. Employer initially proposed a possible virtual option but determined employees would need to report in-person for work. Claimant was made aware of these expectations, which were consistent with her work history. Claimant declined based upon personal reasons related to the COVID-19 pandemic. Claimant has failed to establish she was able and available for work when being recalled by employer. Accordingly, claimant is not eligible for benefits effective August 20, 2020.

**DECISION:**

The unemployment insurance decision dated June 23, 2021, (reference 01) is affirmed. The claimant is not able and available for work effective August 20, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits. 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 due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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August 17, 2021  
Decision Dated and Mailed

jlb/mh