

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELISSA J MADISON
Claimant

FEMA
Employer

APPEAL NO. 19A-UI-05745-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/19
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 9, 2019 reference 04, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on August 12, 2019. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Whether claimant is able and available for work.

Whether claimant refused to accept a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant ended her previous employment with Homeland Security on April 21, 2019 when she was laid off. Claimant then applied for a number of other jobs. As she was applying for other jobs, she did have restrictions on her employment being a single parent. Included in these restrictions was a request that claimant not be asked to work prior to 8:00 a.m., as claimant had a young child and she could not get the child to daycare and get to work by a 7:00 a.m. start time. Claimant could not work prior to 8:00 a.m.

When claimant went through her job interviews, she mentioned her hour requirements and was assured that she wouldn't have to work before 8:00 a.m. Shortly before she was to start, she was informed that the starting time was now to be at 7:00 a.m. Employer didn't explain why the change in hours occurred. Employer also did not say that the job would last over 120 days. In addition to these issues, claimant was offered \$16.00 /hr at the new job. She'd been making \$22.04 / hr at her old job.

REASONING AND CONCLUSIONS OF LAW:

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 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 Code section 96.5(3)b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Claimant has remained able and available for work throughout her time of unemployment. She has consistently applied for jobs that fit her hour requirement. That includes this job. Unfortunately, the hours of the new job were not the hours that were reported to claimant initially.

Additionally, the money that was proposed to claimant in this matter was less than 75% of the money she'd previously been earning. As this is the case, claimant was not obliged to accept the job offer. Claimant may continue to receive unemployment benefits while exploring employment options. Claimant did not refuse a suitable work offer in this matter.

DECISION:

The decision of the representative dated July 9, 2019, reference 04 is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn