

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANTE MORGAN
Claimant

TMONE LLC
Employer

APPEAL 18A-UI-05866-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/29/18
Claimant: Respondent (1R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the May 15, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a lack of an offer of work by Tmone LLC. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2018. Claimant participated. Employer participated through Ciera Turner.

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 April 29, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer witness clearly provided testimony at the fact-finding interview that no offer of work was made to claimant on June 28, 2017, but that her separation from employment was June 29, 2017. The fact-finding interviewer wrote the unemployment insurance decision on the incorrect issue and should have determined whether the separation was qualifying or not, or if the claimant had requalified based upon her federal wages earned with VA Central Iowa Healthcare since the separation with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that no offer of work was made on June 28, 2017, and the claimant is able to work and available for work, for the period in question. The issue that should have been resolved is whether the separation is disqualifying or if she has requalified since this separation date.

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 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".

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Since no offer of work was made, and the date at issue relates to the separation from this employment, Iowa Code section 96.5(3)a is not relevant to this fact situation. By working for the VA after this separation, claimant has established that she is genuinely attached to the labor market. Accordingly, she is considered to be able to and available for work.

DECISION:

The May 15, 2018, (reference 01) unemployment insurance decision is affirmed. No offer of work was made and the claimant is able to work and available for work effective April 29, 2018. Benefits are allowed, provided she is otherwise eligible.

REMAND: The separation and requalification issues as delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice and appeal rights to both parties.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs