

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY L WILLIAMS
Claimant

APPEAL 20A-UI-05429-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Brittany Williams (claimant) appealed a representative's June 3, 2020, decision (reference 02) that denied benefits based on a refusal to recall with REM Iowa Community Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 9, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant refused suitable work, whether the claimant is available for work, whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 18, 2019, as a full-time direct support professional. She was assigned to work second shift at a house, caring for intellectual disabled adults. Due to her school schedule, the claimant asked for a shift change to first shift but was willing to continue working second shift. The employer stopped assigning the claimant to second shift work in January 2020.

The program director had the claimant tour a new home where the claimant could work first shift. The claimant called the program director four to seven days per week asking for a start date. The program director was unavailable to the claimant. The claimant talked to her former supervisor, Nate. He told her to keep trying to get the program director to take her calls. The claimant signed a new shift agreement in early March 9, 2020. The shift agreement listed the new house assignment but did not indicate a start date. The claimant continued to call the

program director four to seven times per week wanting a start date. None was provided. At the end of March 2020, the employer terminated the claimant for "poor communication".

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$159.00. The claimant received a total of \$1,370.61 in state unemployment insurance benefits for the nine-week period ending May 30, 2020. She also received \$5,400.00 in Federal Pandemic Unemployment Compensation for the nine-week period ending May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was able and available for work.

Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

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. 871-24.24(1)a provides:

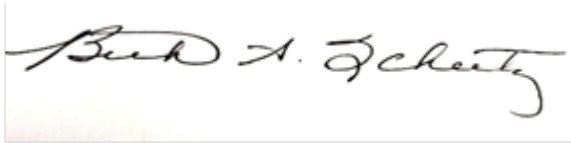
(1) Bona fide offer of work.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was able, willing, and ready to work. The employer did not provide documentation or first-hand testimony at the hearing. Therefore, it did not provide sufficient evidence of an offer of work to rebut the claimant's denial of said offer. There was no evidence of any restriction or limitation on employability. Accordingly, benefits are allowed as of March 29, 2020, provided the claimant is otherwise eligible.

DECISION:

The June 3, 2020, (reference 02) unemployment insurance decision is reversed. The claimant is able and available for work. She is qualified to receive unemployment insurance benefits as of March 29, 2020, if she is otherwise eligible.

A handwritten signature in cursive script that reads "Beth A. Scheetz". The signature is written in black ink on a white background.

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

July 16, 2020
Decision Dated and Mailed

bas/scn