

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JIM HARTLEY**  
Claimant

**L A LEASING INC**  
Employer

**APPEAL 18A-UI-07916-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/11/18  
Claimant: Respondent (4R)**

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:**

L A Leasing, Inc. (employer) filed a timely appeal from the July 18, 2018, reference 07, unemployment insurance decision that allowed benefits based on the determination the job offer made to Jim Hartley (claimant) was unsuitable due to circumstances related to his prior employment with the employer. After due notice was issued, a telephone conference hearing was held on August 13, 2018. The claimant did not respond to the hearing notice and did not participate. The employer participated through Risk Administrative Assistant Emelia Leeney and Account Manager Hannah Chambers. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's database readout (DBRO) and Job Refusal Form in the fact-finding documents.

**ISSUES:**

Was a suitable offer of work made to the claimant?  
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant works as a temporary employee for the employer. The employer made an offer of work to claimant via telephone on June 27, 2018. That offer included the following terms: a temporary position with Network Imaging Solutions, first shift, working 40 hours per week. The wage offered for the job is \$9.50 an hour or \$380.00 per week, which is comparable to the prevailing rate of pay for similar work in the Quad City area. The claimant's average weekly wage is \$370.28. The offer was made in the ninth week of unemployment. The claimant told the employer that he did not have transportation at that time and the client was not on the public bus route. The claimant offered to ride his bicycle but he and Account Manager Hannah Chambers determined there were unsafe roads on the route he would have to take. The claimant had not previously told the employer that he needed only assignments on the bus route.

On July 5, 2018, the claimant accepted the assignment at Network Imaging Solutions. The assignment ended after one day and the claimant contacted the employer to notify it within three days the assignment had ended. The claimant worked for another client on July 18 and 19. After the assignment ended, he contacted the employer within three days seeking new assignment. The claimant began a more permanent assignment on July 30, where he continues to be employed.

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

For the reasons that follow, the administrative law judge concludes the claimant refused a suitable offer of work because he was not able to and available for work for the week ending June 30, 2018.

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 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(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.

Iowa Admin. Code r. 871-24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

The offer may have been suitable, but the reason for the failure to accept the work was because the claimant was not available for work due to a lack of transportation, according to the employer's unrefuted testimony. The claimant was available for work the following week when he accepted the assignment from the employer. Therefore, he is not disqualified from receiving benefits, but is not eligible for the week ending June 30, 2018. Benefits for the week ending

June 30, 2018 are denied. Whether the claimant has been overpaid unemployment insurance benefits for the same week is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The July 18, 2018, reference 07, unemployment insurance decision is modified in favor of the employer. The claimant declined an offer of work but was unavailable for work the week ending June 30, 2018. Benefits are denied for the week ending June 30, 2018.

**REMAND:**

Whether the claimant has been overpaid unemployment insurance benefits for the week ending June 30, 2018 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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