

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN L HARGENS
Claimant

ATLANTIC PEST CONTROL LLC
Employer

APPEAL 20A-UI-08223-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Ryan Hargens (claimant) appealed a representative's July 9, 2020, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with Atlantic Pest Control (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2020. The claimant was represented by Stuart Higgins, Attorney at Law, and participated personally. The claimant's wife, Brenda Hargens, participated on behalf of the claimant. The employer participated by William Menefee, Owner; and Kerri Towne, Office Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant refused suitable work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from April 2012, through March 25, 2020, as a full-time technician. When the Covid-19 pandemic started, the employer decided to have a telephone meeting with employees. On March 26, 2020, the owner told employees to file for unemployment insurance benefits because no work was available. He also told employees he would pay them \$450.00 per week and pay for their insurance. The employer thought he was offering the claimant and other employees work. The claimant did not hear an offer of work.

The employer did not offer any work after March 28, 2020. The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. His weekly benefit amount was determined to be \$481.00. The claimant received a total of \$4,961.00 in state unemployment insurance benefits after the separation from employment. He also received \$4,200.00 in Federal Pandemic Unemployment Compensation for the seven-week period ending May 16, 2020.

The claimant was ready, willing, and able to accept work from March 29, 2020, through May 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 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

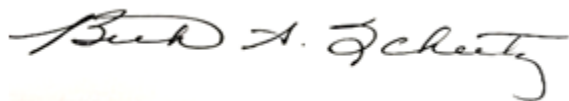
year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The offer of work was made by the employer to the claimant on March 26, 2020. The claimant filed his claim for benefits on March 29, 2020. The claimant did not respond to the employer's proposal before he had a claim for unemployment insurance benefits on file. If there is no valid claim for unemployment insurance benefits on file, there can be no disqualification if work is refused. The claimant is qualified to receive benefits provided he is otherwise eligible.

The claimant provided competent evidence that he was able and available for work from March 29, 2020, through May 16, 2020. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

DECISION:

The representative's July 9, 2020, decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

August 27, 2020
Decision Dated and Mailed

bas/mh