

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAYLOR CAUSEY
Claimant

CELLULAR ADVANTAGE INC
Employer

APPEAL 20A-UI-10911-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2)

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:

On September 4, 2020, Cellular Advantage, Inc. (employer) filed a timely appeal from the September 2, 2020, reference 01, unemployment insurance decision that allowed Taylor Causey (claimant) to receive benefits. After due notice was issued, a telephone conference hearing was held on October 23, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Matt Hayertz, Chief Financial Officer/Treasurer, and David Frazier, Director of Sales for Central Iowa. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories.

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 began working for the employer in April 2018, as a full-time Sales Associate earning \$9.50 an hour plus commission and bonus. On March 29, 2020, the employer laid off the claimant and 47 other employees.

The claimant filed her claim for benefits effective March 15, 2020. The base period includes the fourth quarter of 2018 and the first three quarters of 2019. The claimant had an average weekly wage of \$932.78 during the highest quarter of the base period.

On April 20, David Frazier, Director of Sales for Central Iowa, offered the claimant the opportunity to return to the same job with the same pay on April 23. The claimant declined. She told Frazier that it was not worth the effort to return. On April 23, she followed-up with an email stating she would not be returning. (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accept a suitable offer of work. Benefits are denied effective April 19, 2020.

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 Admin. Code r. 871-24.24 provides, in relevant part:

Failure to accept work and failure to apply for suitable work. Failure to accept work and apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(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.

...

(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.

...

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

The employer has the burden to establish that it made a suitable offer of employment. The employer personally reached out to the claimant, during her claim year, and offered her the same job she had done a month before. The employer has established that it made a suitable offer of employment. The claimant has not established that she had a good cause reason for declining the offer of work. Accordingly, benefits are denied effective April 19, 2020.

DECISION:

The September 2, 2020, reference 01, unemployment insurance decision is reversed. The claimant failed to accept a suitable offer of work. Benefits are withheld effective April 19, 2020, until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

October 27, 2020
Decision Dated and Mailed

src/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.