

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JIMMIE E CLARK
Claimant

SECURITAS SECURITY SERVICES USA
Employer

APPEAL 18A-UI-12038-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/23/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the December 4, 2018 (reference 05) unemployment insurance decision that found claimant was eligible to receive unemployment insurance benefits and that the job offered was unsuitable. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2019. The claimant, Jimmie E. Clark, participated personally. The employer, Securitas Security Services USA, was represented by Barbara Toney and participated through witness Michelle Moorehead. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant able to and available for work?

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 reviewed all of the evidence in the record, the administrative law judge finds:

The employer made an offer of work to claimant via telephone on October 28, 2018. The offer was for claimant to work forty hours per week at the hourly rate of pay of \$11.00, beginning in November of 2018. The job site was located approximately thirty minutes from the claimant's residence.

Claimant had filed an original claim for benefits with an effective date of September 23, 2018. Claimant's average weekly wage is \$906.83. The offer was made in the sixth week of unemployment. Claimant refused the offer of work due to the hourly wage offered.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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.

(emphasis added).

During his sixth week of unemployment, the claimant was only required to accept an offer of work that paid a weekly wage of \$680.12. See Iowa Code § 96.5(3)a(1)b. The job offered would have paid a weekly wage of \$440.00. As such, the offer was unsuitable as it did not meet the minimum wage requirements set out above. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 4, 2018 (reference 05) unemployment insurance decision is affirmed. The offer was unsuitable. Benefits are allowed, provided the claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs