

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAVON T COLLINS
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL 14A-UI-13468-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/14
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 2014, (reference 03) unemployment insurance decision that denied benefits based upon a refusal to recall to work. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2015. Claimant participated. Employer participated through dispatch/human resources assistant Kaleena Middendorf.

ISSUES:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked as a seasonal flagger for the employer until November 8, 2014, when there was limited work available due to the weather. The employer attempted to contact him by phone on multiple occasions to offer work. He accepted a job for November 6 in Marshalltown but was a no-call/no-show. Later that day he told the employer he was pulled over on his way to work and his car was towed due to lack of insurance and his phone was in the car. On November 10, 2014, the employer called him for job assignment with CTI in Cummings, Iowa and he said he would try to find child care and call back. He called back and said he could not arrange daycare on that short notice. On November 12, 2014, the employer was unable to connect with his phone so could not offer a job in Marshalltown. The phone number was verified in the hearing. On November 25, 2014, the employer left a voice mail to ask if he planned to work the next season and did not get a return phone call. Claimant does not recall such a message. Continued work was and is available if claimant maintains communication with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant declined an offer of work because he was not available.

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. 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:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

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(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 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 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 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".

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, he is not disqualified from receiving benefits, but is not eligible for the period beginning November 23, 2014. Benefits are withheld until such time as claimant makes himself available for work.

DECISION:

The December 22, 2014, (reference 03) decision is modified in favor of the appellant. Claimant failed to accept a suitable offer of work because he was not available for work. Benefits are withheld effective November 23, 2014, until such time as the claimant makes himself available for work.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs