

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VALERIE R WOOD
Claimant

APPEAL 17A-UI-05530-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BOONE COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 04/16/17
Claimant: Respondent (1R)**

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 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the May 15, 2017, (reference 04) unemployment insurance decision that allowed benefits based upon an offer of work on February 20, 2017. The parties were properly notified about the hearing. A telephone hearing was held on June 12, 2017. Claimant participated. Employer participated through Franklin Elementary principal Trish Carlson, human resources assistant Aimee Good, and business services director Paulette Newbold. Administrative assistant Lexi Elliott was ill and did not participate. Employer's Exhibits 1 - 11 were received. Claimant's Exhibit A was received.

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 work and available for work effective April 16 or 23, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed her claim on Monday, April 24, 2017, and asked for retroactive benefits to April 16, 2017, which was denied under Iowa Admin. Code r. 871-24.2(1)g. See, 17A-UI-05310-DB-T. For an unknown reason, in spite of the denial of retroactive benefits, the agency set the original claim date as effective April 16, 2017. There is no evidence in the record that a request to backdate the claim was made or granted pursuant to Iowa Admin. Code r. 871-24.2(1)a & h(1) & (2). Thus because there is no official record of backdating and retroactive benefits were denied, the ALJ finds the claim date was effective Sunday, April 23, 2017. Claimant did not consider herself able to work until she filed her claim for unemployment insurance benefits.

Claimant was employed as a full-time (seven hours per day) one-on-one special education associate at Franklin Elementary with student "A" in a "level-three" classroom through March 21, 2017. The separation issue has not yet been resolved. Her last day of work was February 24, 2017. Student A's individual education plan (IEP) was amended and no longer needed

individual attention so on February 17, 2017,¹ Carlson offered claimant for the same job, hours and wages at the same school with third-grade student “B,” also in a level-three classroom. A level-three classroom is set up for a student who may be aggressive and need a timeout or break. Claimant declined because she did not feel safe with B and did not want to work with a “behavior child.” Student A was in level 3 room for cognitive delay. Student B was in the level-three room for non-verbal academic need and the number of special instruction minutes needed. Student B did not have a history of aggression and there were no reports that B hit, scratched or pushed over chairs. Claimant asked Good on February 17 about a middle school special education assistant job. Good told her to contact the principal of that school.

On March 9, 2017, Good made an e-mail offer to claimant for the same job, hours and wages at the same school with student “C,” at Page Elementary. Claimant declined by phone giving the same reason as she had for declining work with student B. C is not an aggressive student either.

Claimant had a work injury on January 30, 2017. She missed work part of that day and was released to light duty work of three hours per day effective February 7, 2017. She usually worked seven hours per day. There were no other work limitations. Carlson called claimant on February 8 to return to light duty. She was released to regular duty on February 13, 2017. Claimant met with Carlson on February 16 when Carlson told her she would only have work four hours per day because of A’s IEP amendment. That is a 43 percent reduction in hours.

Chiropractor Amy Osenbaugh wrote on May 16, 2017, well after the separation, that claimant should not work with a “violent high risk child.” Neither student B or C were considered as such.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer was made outside of the benefit year, which removes the ALJ’s jurisdiction.

Iowa Code section 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

¹ Not February 20 as the fact-finding interviewer indicated.

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:

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

(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 administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits are allowed, provided she is otherwise eligible.

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. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant was fully released to work by her medical practitioner on February 13, 2017, but did not consider herself able to work until she filed her claim on April 24, effective April 23, 2017. In any event, since her claim is effective April 23, 2017, benefits are allowed as of that date, provided she is otherwise eligible.

DECISION:

The May 15, 2017, (reference 04) unemployment insurance decision is affirmed. Claimant failed to accept an offer of work made outside of her benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs