

**IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS, UI APPEALS BUREAU**

AYREME B BROWN

Claimant

APPEAL NO. 23A-UI-04365-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BICKFORD SENIOR LIVING GROUP LLC

Employer

OC: 02/26/23

Claimant: Appellant (2)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code Section 96.4(6)(a) – Department Approved Training

STATEMENT OF THE CASE:

On April 25, 2023, Areme Brown (claimant) filed a timely appeal from the April 21, 2023 (reference 05) decision that disqualified her for benefits, based on the deputy's conclusion the claimant refused to apply for suitable work with Bickford Senior Living Group, L.L.C. on March 19, 2023. The claimant requested an in-person hearing. After due notice was issued, a hearing was held on May 18, 2023 at the Fort Dodge IowaWORKS Center. Claimant participated. The employer did not appear and did not participate. Exhibit A, the online appeal, and Exhibit B, a text message exchange between the claimant and the prospective employer, were received into evidence. Department Exhibits D-1, D-2 and D-3 were received into evidence. Department Exhibit D-1 consists of the DBRO, KCCO and WAGEA records. Department Exhibit D-2 consists of the reference 05 fact-finding materials. Department Exhibit D-3 consists of the March 21, 2023 (reference 03) DAT decision and DAT application.

ISSUES:

Whether the claimant refused an offer of suitable employment without good cause in March 2023.

Whether the claimant was exempted from the work search requirement due to Department Approved Training (DAT).

FINDINGS OF FACT:

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

Ayreme Brown (claimant) established an original claim for benefits that was effective February 26, 2023.

The claimant's base period wages derive primarily from full-time work with NursePro Staffing Agency, for whom the claimant worked as a full-time traveling Certified Nursing Assistant (CNA). The claimant worked second-shift and third-shift hours for NursePro and often worked double-shifts. During the base period, the claimant also worked part-time in another CNA position.

The claimant's highest-earning base period quarter was the second quarter of 2022, during which NursePro paid the claimant wages totaling \$20,206.00. That amount reflects \$1,554.31 in average weekly wages.

The claimant made weekly claims for the six weeks between March 12, 2023 and April 22, 2023. According to Iowa Workforce Development weekly claims records (KCC), the claimant reported zero job applications and zero reemployment activities when she made her weekly claims. However, the claimant advises that she applied for a total of three jobs, including a CAN position with Bickford Senior Living Group, L.L.C. At the time the claimant applied with Bickford, the claimant was interested in part-time employment.

On March 14, 2023, Bickford initiated text message correspondence with the claimant in response to the claimant's application. Bickford wrote:

Hello Ayreme – Thanks for submitting an application to Bickford of Fort Dodge. We've carefully reviewed your application and would love to schedule an interview to further discuss your qualifications for this role. Please respond at your earliest convenience letting us know when you are free to visit our office for an in-person interview. Looking forward to hearing from you. Reply STOP to opt-out.

The claimant responded to Bickford on March 14, 2023, as follows: "Oh perfect! I can come tomorrow around 11am if that's ok." The parties settled on a noon, March 15, 2023 interview and the claimant confirmed "I'll be there."

The claimant elected not to appear for the interview set for noon on March 15, 2023. At 11:56 a.m. on March 15, the claimant sent Bickford the following text message: "Sorry for the inconvenience but I won't be able to make it in for the interview." Bickford promptly responded, "Thanks for letting me know. I wish you the best in your future endeavors." There was no further contact between the claimant and Bickford.

The claimant elected not to appear for the interview and not to further pursue the employment because she had decided instead to focus on her academic studies.

On March 15, 2023, the same day the claimant cancelled the interview with Bickford, the claimant submitted an Application for Department Approved Training to Iowa Workforce Development. In the application, the claimant indicated she had commenced attending Iowa Central Community College in October 2022 and was taking prerequisite classes as part of a nursing program. The claimant indicated she anticipated completing the course of study on May 6, 2024. The claimant reported her base period work hours as 2:00 p.m. to 6:00 a.m. The claimant reported her class schedule as 8:00 a.m. to 1:00 p.m. on Tuesday, 8:00 a.m. to 4:15 p.m. on Thursdays and participation in tutoring on unspecified hours on Monday, Wednesday and Friday. The claimant attached a Spring 2023 class schedule that included a Nutrition class on Tuesdays and Thursdays from 11:30 a.m. to 1:00 p.m. and a Human Anatomy class from 8:00 a.m. to 9:30 a.m. on Tuesdays and Thursdays, with a lab section on Thursday from 2:15 p.m. to 4:15 p.m. The Nutrition class was a three-credit class and the Human Anatomy class was a four-credit class, for a total of seven credit hours for the term. The class schedule and credit hours reflected part-time enrollment at Iowa Central.

On March 21, 2023, Iowa Workforce Development approved the claimant for Department Approved Training (DAT) for the period of February 26, 2023 through July 29, 2023. The DAT approved exempted the claimant from the work search requirement for the period of

February 26, 2023 through July 29, 2023, provided the claimant made satisfactory progress in her studies.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(6)(a-b) provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. (1) An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. section 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. section 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

Iowa Admin. Code r. 871-24.39 provides:

Department-approved training. The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) The claimant must make application to the department setting out the following:

a. The educational establishment at which the claimant would receive training.

b. The estimated time required for such training.

c. The date the training will be complete or the degree will be obtained

d. The occupation which the training is allowing the claimant to maintain or pursue.

e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. The educational establishment must be a college, university or technical training institution.
- b. The training must be completed 104 weeks or less from the start date.
- c. The individual must be enrolled and attending the training program in person as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

Iowa Code section 96.5(3)(a) provides, in part, as follows:

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. ...

Because Iowa Workforce Development approved the claimant for Department Approved Training (DAT) status for the period on February 26, 2023 through July 29, 2023, the claimant's March 15, 2023 decision to cancel the interview with Bickford and forego seeking employment with Bickford cannot serve as a basis for disqualifying the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

DECISION:

The April 21, 2023 (reference 05) decision is REVERSED. Because Iowa Workforce Development approved the claimant for Department Approved Training (DAT) status for the period on February 26, 2023 through July 29, 2023, the claimant's March 15, 2023 decision to cancel the interview with Bickford and forego seeking employment with Bickford cannot serve as a basis for disqualifying the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive style and is positioned above a horizontal line.

James E. Timberland
Administrative Law Judge

May 25, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.