

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINA L WOLFE
Claimant

AEROTEK INC
Employer

APPEAL 23A-UI-10292-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/16/23
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)a – Refusal of Offer of Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 26, 2023 (reference 06) unemployment insurance decision that found the claimant was not eligible for benefits as she had refused an offer of work on September 7, 2023. Due notice was issued, and a telephone hearing was held on November 20, 2023. The claimant participated personally. The employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant refuse to apply for or accept a suitable offer of work?
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 filed an initial claim for unemployment insurance benefits with an effective date of July 16, 2023. She has filed weekly continued claims for unemployment insurance benefits for the weeks between July 16, 2023, and September 16, 2023. She filed her initial application for benefits due to a permanent separation with her full-time employer, where she worked Monday through Friday each week from 7:30am to 4:00pm and no weekend work.

On August 28, 2023, Aerotek had offered the claimant a position as a full-time inventory specialist being placed at Des Moines Mercy Hospital. This position was to pay \$17.00 per hour with working hours from 7:00am to 3:30pm on Mondays through Fridays and every other Saturday. Claimant was subject to a background check and no firm start date was given to her for the position. Claimant did not want to work in a hospital or work on Saturdays.

On or about August 28, 2023, the claimant was offered another job with Costco and Equifax. The Costco job had an immediate start date on September 10, 2023, but was part time and the Equifax job was full-time but did not have a start date until October 2, 2023. Claimant preferred

the Equifax job because it did not require her to work weekends, was not located in a hospital, and had working hours that she preferred.

REASONING AND CONCLUSIONS OF LAW:

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

The offer of work from this employer was made during claimant's seventh week of unemployment benefits. The claimant had performed this type of work in the past. The offer was for \$17.00 per hour for 40 hours per week but required her to work on Saturdays. Further, the offer did not have an actual start date as the claimant would have been required to pass a background check.

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 week of unemployment.

(b) Ninety percent, if the work is offered during the second through the third week of unemployment.

(c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.

(d) Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.

(e) Sixty percent, if the work is offered after the eighth 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(1)a provides:

(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.

Iowa Admin. Code r. 871-24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

In this case, a bona fide offer of work was not made to the claimant and/or she had good cause to refuse an offer of work. Because the claimant had not passed required background checks, it is unknown what date, if any, the claimant could have actually started working for the company that this employer wanted to place the claimant at. Even if a bona fide offer of work was established, claimant had a good cause reason to refuse the offer because it would have required her to work weekends in addition to full time hours Monday through Friday each week. Claimant did not have a job history of working weekends in her base period, and as such, is not required to accept a position dissimilar from what she had previously been working in her base period. Therefore, there was no refusal of an offer of work which would be disqualifying to the claimant.

However, claimant is required to be able to and available for work if she is filing for and receiving unemployment insurance benefits.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

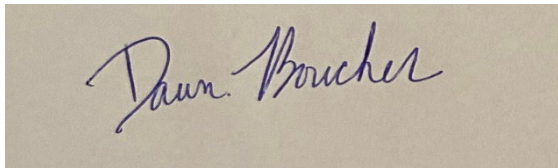
(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In this case, the claimant began full-time employment on October 2, 2023, with Equifax. Therefore, claimant is not eligible for any unemployment insurance benefits after October 2, 2023, due to her working full-time hours effective that date. No payment of benefits has been issued to the claimant after the week-ending September 9, 2023, so there is no overpayment at this time due to any disqualification on the ground of ability to and availability for work.

DECISION:

The October 26, 2023 (reference 06) unemployment insurance benefits decision is modified in favor of the claimant. There was no bona fide offer of work made to the claimant by this employer and there is no disqualification for any refusal of offer of work. That disqualification shall be removed.

However, the claimant is not available for full-time work effective October 2, 2023, due to her employment with Equifax. Benefits are denied effective October 2, 2023 (benefit week ending October 7, 2023), and weekly thereafter unless and until the claimant becomes able to and available for full-time work again.



Dawn Boucher
Administrative Law Judge

November 21, 2023
Decision Dated and Mailed

db/scn

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
6200 Park Avenue Suite 100
Des Moines, IA 50321
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
6200 Park Avenue Suite 100
Des Moines, IA 50321
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.