

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

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**KIMBERLY D LEDBETTER**  
Claimant

**APPEAL 23A-UI-05970-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAS RETAIL MERCHANDISING**  
Employer

**OC: 03/19/23  
Claimant: Appellant (4)**

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Iowa Code § 96.5(3)a – Work Refusal – % AWW  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

**STATEMENT OF THE CASE:**

On June 9, 2023, the claimant filed an appeal from the June 1, 2023, (reference 03) unemployment insurance decision that denied benefits based upon the determination that claimant refused a suitable offer of work. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2023. The claimant, Kimberly D. Ledbetter, participated personally. The employer, SAS Retail Merchandising, did not participate. The administrative law judge took official notice of the administrative record.

**ISSUES:**

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: Claimant filed a claim for unemployment insurance benefits with an effective date of March 19, 2023, after a permanent separation from employment. Claimant's average weekly wage during the high quarter of the base period was \$257.53.

On April 5, 2023, claimant was offered and accepted a team lead merchandising position with the employer. Her start date was set for April 18, 2023. The position was part-time, Tuesday through Friday, every other week. The wage was \$18.00 per hour. The offer was made during the third week of unemployment. Claimant was told that she would have three direct reports in her position. She was told that they would assist her with the more physical aspects of the job.

On April 7, 2023, claimant began orientation for the position. Orientation on April 7, 2023, consisted of watching an orientation video. Once claimant watched the orientation video, the woman who was supposed to train her called her. The trainer told claimant that she did not know why she was told she would lead a team, because the employer had just terminated more than 1,000 employees recently, and it was very short staffed. The trainer also stated that she had been traveling from Omaha, Nebraska every time the job needed to be worked. The trainer

asked claimant whether she would be traveling in her position; claimant is unable to travel and responded that she would not be traveling.

After claimant spoke to the trainer, she did some research on the company and discovered that the trainer's report regarding the downsizing was accurate. She felt she had been lied to with respect to the position she had been offered as team lead, since she now believed she would not have a team to lead. Because she felt the job had been misrepresented to her, she contacted the person who hired her by email and stated she would not be starting the position because of medical concerns related to her mother. The trainer did not have supervisory authority over claimant, and claimant did not bring her concerns to the person who hired her before she notified the employer she did not intend to move forward with the position.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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 96.1A, subsection 38, paragraph "b", subparagraph (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 Code section 96.5(3) provides, in pertinent part:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

A two-step analysis is used to determine whether a claimant has refused a suitable offer of work. First, the offer must be for suitable work. If suitability is established, then, claimant must have a good cause reason for refusal. See Iowa Admin. Code r. 871—24.24(3).

To be considered suitable, an offer of work must meet minimum wage requirements set out above. Because the offer was made during claimant's third week of unemployment, the offer must meet or exceed 90% of claimant's average weekly wage to be considered suitable. Claimant's average weekly wage during the highest quarter of his base period is \$257.53. Ninety percent of the average weekly wage is \$231.77. Employer's offer was for 32 hours every

other week at a wage of \$18.00 per hour, which amounts to a gross weekly wage of \$288.00. The offer meets or exceeds the minimum wage requirement and, therefore, is considered suitable. Claimant refused the offer of work because she felt the job had been misrepresented to her based on the report of the trainer. She did not bring her concerns to a person with supervisory authority prior to refusing the job offer. This does not constitute good cause for refusing the offer of work. Accordingly, benefits are denied.

**DECISION:**

The June 1, 2023, (reference 03) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. Employer extended an offer of suitable work to claimant during the benefit year; claimant failed to accept the offer without a good cause reason on April 7, 2023. Benefits are denied effective April 2, 2023.



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Alexis D. Rowe  
Administrative Law Judge

July 5, 2023  
Decision Dated and Mailed

ADR/jkb

**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  
4<sup>th</sup> 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.