

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS SHAFER
Claimant

CARL A NELSON & COMPANY
Employer

APPEAL 20A-UI-02339-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/05/20
Claimant: Respondent (2R)**

Iowa Code § 96.4-3 – Able and Available for Work
Iowa Code § 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Carl A. Nelson & Company (employer) appealed a representative's March 11, 2020 decision (reference 01) that concluded Nicholas Shafer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Mike Harris, General Superintendent. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 25, 2019, as a full-time construction craftsman. The claimant was laid off from work on December 6, 2019. He filed for unemployment insurance benefits with an effective date of January 5, 2020. His average weekly wage was \$630.63.

On February 13, 2020, the employer talked to the claimant on the telephone. He offered him a new job starting on February 17, 2020, in Dubuque, Iowa. The rate of pay would be at \$17.34 per hour. The claimant would work fifty or more hours per week and earn time and one-half pay for overtime hours. The claimant would earn approximately \$693.00 to 953.00 per week. The employer told the claimant it would put \$400.00 on the employer's card for the claimant's use to travel, get a hotel in Dubuque, Iowa, and other employment related expenses. The claimant accepted the job.

The claimant did not appear for work on February 17, 2020. He took the \$400.00 from the employer's card but it was not used for employment purposes in Dubuque, Iowa. The employer has not heard from the claimant.

The claimant filed his claim for unemployment insurance benefits on January 5, 2020. He has received \$3,560.00 in state unemployment insurance benefits since February 16, 2020. The claimant has also received federal unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was not able and available for work. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not participate in the hearing and, therefore, provided no evidence of being able and available for work. Benefits are denied.

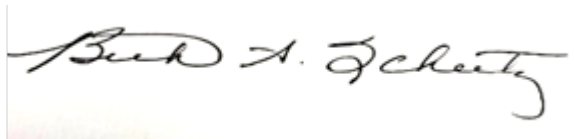
Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

The issue of the claimant's overpayment of benefits is remanded for determination.

DECISION:

The representative's March 11, 2020 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he was not available for work with the employer.

The issue of the claimant's overpayment of benefits is remanded for determination.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

April 30, 2020
Decision Dated and Mailed

bas/scn