

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**VICKI D GASKILL**  
Claimant

**APPEAL NO: 18A-UI-09123-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESS INDUSTRIES**  
Employer

**OC: 04/15/18  
Claimant: Appellant (1)**

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(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 28, 2018, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2018. The hearing was held jointly with Appeal 18A-UI-09124-JC-T. The claimant participated. The employer participated through Shelly Nesheim, office manager.

The administrative law judge took official notice of the administrative records, including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer made an offer of work to the claimant on August 2, 2018, during a personal phone call with the claimant. That offer included the following terms: A part-time direct support professional, to begin work on August 20, 2018, working 17-22 hours each week. The claimant's rate of pay would begin at \$10.25 per hour and she would be subject to a raise to \$11.25 per hour.

The claimant's average weekly wage is \$233.08. The offer was made between the 12th and 18th week of unemployment. Consequently, the wage offered must equal or exceed 70 percent of her average weekly wage (\$163.00). The wage offered in this case was \$10.25 x 17 hours

per hour or \$174.25 per week, thus meeting the wage requirement. The claimant refused the offer stating she couldn't make ends meet financially with the offer.

The claimant has been searching for part-time work, approximately 20-30 hours. She has indicated she needs to make \$425.00 net wages every two weeks. She also receives social security payments. She currently has applied for positions related to be a driver, working in a cafeteria and in customer service. Since April 2018, she has also been a caregiver to her neighbor, who relies upon her for transportation to appointments and help with daily tasks. The claimant has valid transportation available and has a 40 pound lifting restriction.

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

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 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.

In this case, the claimant was extended but declined an offer of work as a direct support professional with this employer. The offer was suitable as it exceeded 65 percent of the claimant's average weekly wage, and claimant did not have a good cause reason for the failure to accept it.

For the reasons that follow, the administrative law judge concludes claimant declined an offer of work because she was not available.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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. 871-24.23(3) and Iowa Admin. Code r. 871-24.23(16) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant currently is limiting work she will accept based upon wages she thinks are acceptable and hours that will work with her existing schedule, which includes significant time every week as a caregiver to her neighbor. The administrative law judge is sympathetic to the claimant, but the evidence presented is that she is placing restrictions on her employability to an extent that she has not established a reasonable expectation to secure work.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, she is not disqualified from receiving benefits, but is not eligible for the period beginning July 29, 2018. Benefits are withheld until such time as claimant makes herself available for work.

**DECISION:**

The August 28, 2018, (reference 03) decision is affirmed. The claimant failed to accept a suitable offer of work. Benefits are withheld effective July 28, 2018, until such time as the claimant makes herself available for work.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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