

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LYNDI M COBURN
Claimant

VALLEY PARK FAMILY DENTAL PC
Employer

APPEAL NO. 21A-UI-14549-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 21, 2021, reference 03, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on August 20, 2021. Claimant participated personally. Employer participated by Kathy Mundfrom.

ISSUE:

Whether claimant refused to accept a suitable offer of work?

Whether claimant is 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: Employer made an offer of work to the claimant on May 12, 2020 to return to work on May 18, 2020. That offer included the following terms: Claimant was offered to return to her full time position at the same hours and wages she had been working prior to the pandemic. Claimant refused the offer of work because she had respiratory concerns and her husband had recently been in a life-threatening accident and was still in the hospital. Employer attempted multiple other times to ask when claimant might be able to return to work. On June 3 employer asked if claimant was ready to return, and claimant shared that her husband was having more surgeries and she was the caretaker for him. Claimant returned her office jackets shortly thereafter, but still wanted to be in consideration for her job. Claimant called employer on October 1 as she had seen a job opening on Indeed. Employer stated that her job was still there for her, and that claimant should be in touch with employer if she wanted to return to work.

Claimant had no further contact with employer and took a job with another facility in November 2020.

Claimant stated that at no time did employer ever offer claimant her job back. She said that she spoke with employer one time in May, but employer stated they were opening to a smaller

capacity and did not need her services. Claimant indicated she did not speak with employer after that conversation as employer indicated that they would be in contact with her if they ever had a need for her to return. Claimant stated that although her husband had a serious auto accident shortly before the call from employer on May 12 that she was willing to return to work as others could care for him. Claimant did say her husband nearly died in the accident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work.

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 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id.

In this matter, employer's testimony was far more credible than claimant's as to the contacts between the parties and the job offer. Employer's testimony was reading from contemporaneous notes taken from conversations and included facts about the claimant that she'd omitted from her own testimony. As employer's testimony is far more credible and stated specifics of the offer, the administrative law judge finds claimant did refuse an offer of work effective May 18, 2020. Benefits are denied as of that date as claimant was not able and available for work.

DECISION:

The decision of the representative dated June 21, 2021, reference 03 is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is ineligible to receive unemployment benefits from the date of May 18, 2020.



Blair A. Bennett
Administrative Law Judge

August 25, 2021
Decision Dated and Mailed

bab/kmj

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 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>.