

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RIGOBERTO ARCEO
Claimant

MANATT'S INC
Employer

APPEAL 18A-UI-05979-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/26/17
Claimant: Appellant (4)**

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 May 18, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a work refusal. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2018. Claimant participated personally and through an interpreter with CTS Language Link. Employer did not answer at the number it registered for the hearing and did not participate.

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: Claimant began working for employer in July 2006. Claimant works for employer as a concrete finisher. The work is seasonal and claimant is laid off every winter. Claimant was laid off in November 2017. On April 26, 2018, employer spoke with claimant on the phone and asked him to return to work on Monday, April 30, 2018, at a rate of \$19.50 per hour. Claimant stated that his sister in California was ill and he needed to go see her. Claimant and employer agreed claimant would instead return to work on Monday, May 14, 2018. Claimant returned to work on May 14, 2018.

REASONING AND CONCLUSIONS OF LAW:

In this case, employer made a suitable offer of work that claimant accepted. Therefore the issue of whether claimant refused a suitable offer of work will not be discussed further in this decision. However, there is an outstanding issue of whether claimant is eligible for benefits during the two weeks ending May 12, 2018.

In order to be eligible for benefits, a claimant must be able to and available for 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 Admin. Code r. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

In this case, claimant is not eligible for unemployment insurance benefits for the two weeks ending May 12, 2018, as he was out of town for personal reasons. Employer had work available for claimant. Claimant was not available for work. Therefore, claimant is not eligible for benefits for those two weeks.

DECISION:

The May 18, 2018, (reference 01) decision is modified in favor of claimant. Claimant accepted the offer of recall that was made on April 26, 2018, and is not disqualified from receiving benefits based on a work refusal. However, claimant is not eligible for benefits during the two weeks ending May 12, 2018, due to his unavailability for work.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn