

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER L WILSON**

Claimant

**ATLANTIC PEST CONTROL LLC**

Employer

**APPEAL 20A-UI-07772-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**

**Claimant: Appellant (2R)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.5(3)a – Work Refusal – % AWW

Iowa Code § 96.5(3)b – Work Refusal – Unsuitable

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the July 9, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 14, 2020, at 8:00 a.m. Claimant participated with her attorney Leonard Bates. Employer did not participate. Claimant's Exhibits 1 – 12 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is able to and available for work.

Whether claimant refused to apply for or accept an offer of suitable work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Administrative Assistant from June 11, 2019 until her employment with Atlantic Pest Control ended on May 11, 2020. Claimant worked 40 hours per week and earned \$14.00 per hour. On March 29, 2020, employer laid claimant off due to lack of work as a result of Covid-19. On April 27, 2020, employer asked claimant to return to work; claimant would be working under the same terms and conditions of employment prior to the layoff. On April 28, 2020, claimant declined to return to work due to ongoing sexual harassment she experienced at work from her supervisor, Bill Menefee, who is also the owner. (See Exhibit 2) On April 28, 2020, claimant filed a complaint with Iowa Civil Rights Commission. On May 11, 2020, claimant resigned her employment with Atlantic Pest Control. The issue of claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not refuse an offer of suitable work. Benefits are allowed provided claimant is otherwise eligible.

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)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.

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.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Admin. Code r. 871-24.24(15)I provides:

Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

Employer's offer for claimant to return to work was not suitable based upon the sexual harassment to which claimant was subjected. Even if the offer was considered suitable, sexual harassment constitutes good cause for claimant refusing the offer. Claimant did not refuse to accept an offer of suitable work. Benefits are allowed provided claimant is otherwise eligible.

#### **DECISION:**

The July 9, 2020 (reference 02) unemployment insurance decision is reversed. Claimant did not refuse to accept an offer of suitable work. Benefits are allowed provided claimant is otherwise eligible.

**REMAND:**

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



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Adrienne C. Williamson  
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August 20, 2020  
Decision Dated and Mailed

acw/scn