

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHAN W DERRICK
Claimant

BARI ITALIAN LLC
Employer

APPEAL 19A-UI-08766-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/19/19
Claimant: Appellant (2)

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:

On November 7, 2019, the claimant filed an appeal from the November 4, 2019, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2019. Claimant participated. Employer did not answer at the number it provided 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 and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant during the one week ending October 19, 2019. Employer offered claimant a position as a full-time sous chef at a salary of \$40,000.00. Claimant's average weekly wage is \$828.40. The offer was made in claimant's 22nd week of unemployment. Employer is a new restaurant that will only be open during the evening. Claimant declined the offer because he is only looking for work that involves daytime hours and one or two evenings per week because he has children.

Claimant was last employed as an executive chef and in that position he worked the schedule he is currently seeking.

REASONING AND CONCLUSIONS OF LAW:

Cases of "refusal of suitable work without good cause" are subject to a two-step analysis. First, was the offer for suitable work? And if so, did the claimant have a good cause for refusal?

Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was made and that it was suitable. Iowa Code § 96.5(3)a(1) provides:

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 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.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In this case, the offer was for suitable work. It meets the wage requirement in claimant's 22nd week of unemployment and is compatible with claimant's training and experience.

The next issue is whether claimant refused the offer for good cause. The administrative law judge concludes that he did. Claimant is seeking a first shift schedule with only occasional

evenings because he wants to spend time with his children. Employer was offering employment in the evening only.

The final issue is whether claimant is considered not able to or available for work considering he is not willing to accept employment that involves only second shift 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(16) provides:

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

(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.

In this case, claimant is looking for first shift work with occasional evenings. Claimant is seeking chef or cook positions. While some of these jobs may involve evening hours only, many restaurants are also open for breakfast and lunch and need cooks and chefs during those hours.

The administrative law judge finds claimant is not unduly limiting his availability for work by seeking first shift employment with occasional evenings in the restaurant industry. Claimant has established he is able to and available for work.

DECISION:

The November 4, 2019, (reference 01) decision is reversed. The offer of work was suitable, but claimant declined it for good cause. Claimant is able to and available for work and benefits are allowed effective October 13, 2019.



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

December 5, 2019
Decision Dated and Mailed

cal/scn