

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RANDY SMITH**  
Claimant

**WEIKERT IRON & METAL RECYCLING**  
Employer

**APPEAL 20A-UI-14433-SN-T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (3)**

Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Randy Smith, appealed a representative's decision dated October 28, 2020 (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with, Weikert Iron & Metal Recycling, (employer). A telephone hearing was held on January 11, 2021 at 8:00 a.m. Claimant participated. Employer participated through Owner Scott Weikert. Official notice was taken of the administrative records.

**ISSUES:**

The issues are whether the claimant refused suitable work and whether the 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 that:

The claimant was hired on September 14, 2019 as a full-time shop worker in Muscatine, Iowa. The employer laid off the claimant and its other employees in March 2020 in response to the Covid19 pandemic. Mr. Smith's supervisor was Owner Mike Weikert Jr. Prior to the layoff, the claimant was working 40 hours per week and he was earning an hourly rate of \$11.00. The claimant does not have a driver's license. He lives so close to the employer that he can walk for his commute.

On May 15, 2020, Mr. Weikert called the claimant and offered him a full-time job with the same hours and wages as he held prior to the layoff. The claimant initially hung up on Mr. Weikert. The claimant called Mr. Weikert back and accepted the offer.

On May 29, 2020, the claimant said he hurt his back at his daughter's house in Des Moines, Iowa. Mr. Weikert said the claimant could not return to work without obtaining a release from his physician.

On June 3, 2020, the claimant said his back still had not recovered. Mr. Weikert reiterated the claimant could not return until he obtained a release from his physician.

On June 14, 2020, the claimant's third grandchild was born. The claimant's daughter was not able to take care of her two other children while she was recovering from the pregnancy. The claimant traveled to his daughter's house to help her until she recovered from the pregnancy. The claimant also did not want to return to the employer because he believes employers generally do not take adequate precautions regarding Covid19. The claimant understandably does not want his daughter and grandchildren catching the illness from him.

On June 15, 2020, the employer filled the position that was offered to the claimant on May 15, 2020. The claimant did not ever obtain a release to return to work.

The claimant continues to lack a driver's license. This impacts his ability to commute to work. This is especially the case when he is helping his daughter in Des Moines, Iowa.

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

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

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits:

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.

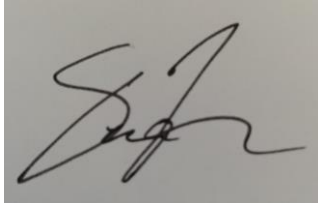
Iowa Admin. Code r. 871-24.24(4) provides:

**(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.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. The claimant was unavailable for several reasons at the time the offer was made to him by Mr. Manternach. He was geographically removed from the area of the employer by a considerable distance. He was unable to perform work due to a nagging back injury. He was also unavailable due to providing adequate childcare to his daughter in light of her recovery from delivering her third daughter. He remains unavailable to many employers due to lacking transportation, especially when he is helping his daughter. The claimant's generalized concerns about transmitting Covid19 also generally made him unavailable. Therefore, the claimant is not disqualified from receiving benefits, but is not eligible for the period from May 15, 2020 to January 16, 2021. Benefits are withheld until such time as claimant makes himself available for work.

**DECISION:**

The representative's October 28, 2020, decision (reference 01) is modified in favor of the respondent. The claimant is not disqualified from receiving benefits, but is not eligible for the period from May 15, 2020 to January 16, 2021 because he is not able and available for work.



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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

February 19, 2021  
Decision Dated and Mailed

smn/mh

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and 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, but who 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>. If this decision becomes final, or if you are not eligible for PUA, you may have an overpayment of benefits.