

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TINA S GOHEEN
Claimant

FRIDLEY THEATRES LLC
Employer

APPEAL NO. 21A-UI-12471-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 12, 2021, reference 01, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on July 29, 2021. Claimant participated personally. Employer participated by Lisa Dotson.

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: Claimant stated that she met with a manager for employer at her residence in May of 2020. At that time, she stated that she was told by the manager that there was not a position for her as the restaurant was only going to be open evenings and claimant had worked mornings and early afternoons. Employer did not have the supervisor who allegedly made an offer to work to claimant testify at the hearing, nor did they have the manager to whom the supervisor allegedly spoke after the meeting. Employer had a payroll manager who was not involved in any discussions testify. Employer's witness alleged that employer made an offer of work to the claimant in late May 2020. That offer included the following terms: that claimant would have to switch to working evenings as employer's business was not going to be open during the day. Employer did not tell of hours to be worked or wages. The offer was made in approximately the 10th week of unemployment. Claimant refused the offer of work because she didn't want to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work as no offer was ever made.

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.

Here, employer chose not to have witnesses testify who could give specifics about a meeting and an offer being extended. The only direct testimony received was from claimant, and she testified that no offer was ever made and employer stated that they did not have a position for claimant. Employer did not prove an offer was ever made. Benefits allowed.

DECISION:

The decision of the representative dated May 12, 2021, reference 01 is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

August 03, 2021 484861409

Decision Dated and Mailed

bab/ol