

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RHONDA L PHILLIPS**  
Claimant

**YOUNG HOUSE FAMILY SERVICES INC**  
Employer

**APPEAL 20A-UI-13229-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Respondent (4R)**

Iowa Code § 96.4(3) – Able to and Availability for Work  
Iowa Code § 96.5(3)a – Refusal of Offer or Recall to Work

**STATEMENT OF THE CASE:**

On October 20, 2020, the employer filed an appeal from the October 15, 2020 (reference 02) unemployment insurance decision that allowed benefits to the claimant based upon the fact that the offer of work was not suitable. The parties were properly notified about the hearing. A telephone hearing was held on December 17, 2020. Claimant participated personally. The employer, Young House Family Services Inc., was represented by Sue Beer and participated through witness Heather Brueck. Claimant's Exhibits A, B and C were admitted. The employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to and available for work?  
Did the claimant refuse to apply for or accept a suitable offer of work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had previously worked for the employer as a part-time shelter caseworker. Her position was eliminated effective March 31, 2020. She was making \$17.48 per hour and worked between 20-24 hours per week.

On April 21, 2020, Ms. Brueck reached out to the claimant to see if she wanted to return to her same job as a part-time caseworker. Claimant emailed Ms. Brueck on April 22, 2020 stating that she was not available to work until after July 1, 2020 due to commitments she had already taken on. Claimant was working part-time as a babysitter for a family who had lost their daycare provider. On Thursday, June 25, 2020, the claimant reached out to Ms. Brueck about the position but it had been filled. See Ex. A.

On or about July 15, 2020, Ms. Brueck again contacted the claimant about coming back as a part-time caseworker. The claimant stated that she would be interested and would be back in

touch with Ms. Brueck. The claimant never contacted Ms. Brueck back. Ms. Brueck attempted to contact the claimant; however, she was unable to reach her.

Claimant had filed an original claim for benefits with an effective date of April 5, 2020. Her base period consists of the first quarter of 2019 through the fourth quarter of 2019. The highest wages reported in her base period is in the first quarter of 2019 for \$5,339.00. Therefore, claimant's average weekly wage is \$410.69. The offer was made in the fifteenth week of unemployment.

Claimant has been paid regular unemployment insurance benefits, Federal Pandemic Unemployment Compensation benefits, and Federal Pandemic Emergency Unemployment Compensation benefits since filing her original claim for benefits. The issues of overpayment of benefits shall be remanded to the Benefits Bureau for an initial investigation and determination.

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

In order to be eligible for benefits, the claimant must first establish that she is 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 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.

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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(7) provides:

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

- (7) Where an individual devotes time and effort to becoming self-employed.

In this case, the reason for the claimant's failure to accept the offer of work on April 21, 2020 was because she was devoting her time to self-employment as a babysitter. As such, the claimant was not able to or available for work, pursuant to Iowa Code § 96.4(3) effective the benefit week beginning April 19, 2020 through the benefit week ending June 27, 2020. Benefits are denied from April 19, 2020 through the benefit week ending June 27, 2020 while the claimant was unavailable for work.

The next issue is whether the claimant refused a suitable offer of work on July 15, 2020. The administrative law judge finds that she did refuse a suitable offer of work.

The employer made another offer of work on July 15, 2020 for the claimant to return to the same position as before. It was the same position with the same rate of pay and same hours. Claimant stated she was accepting this offer but then never actually started the position. This offer of work was made during the fifteenth week of the claimant's unemployment.

Claimant had filed an original claim for benefits with an effective date of April 5, 2020. Her base period consists of the first quarter of 2019 through the fourth quarter of 2019. The highest wages reported in her base period is in the first quarter of 2019 for \$5,339.00. Therefore, claimant's average weekly wage is \$410.69. The offer was made in the fifteenth week of unemployment. During the fifteenth week she filed a weekly claim for unemployment, the claimant was only required to accept an offer of work that paid a weekly wage of \$287.48 (70% of her Average Weekly Wage). See Iowa Code § 96.5(3)a(1)a.

The job offered at \$17.48 per hour for a minimum of 20 hours per week would have paid a weekly wage of \$349.60. This would have paid above 70% of the claimant's average weekly wage of her high quarter in the base period.

As such, the offer made to the claimant to return to the same position that she was previously working was suitable and the claimant did not have good cause to refuse it. Benefits are denied effective the week-beginning July 12, 2020 due to the claimant's refusal of a suitable offer of work.

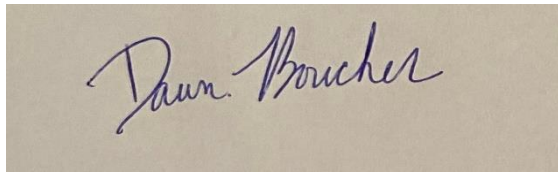
**DECISION:**

The October 15, 2020 (reference 02) unemployment insurance decision is modified in favor of the appellant. Regular unemployment insurance benefits are denied from April 19, 2020 through the benefit week ending June 27, 2020 due to the claimant not being able to and available for work.

Regular unemployment insurance benefits funded by the State of Iowa are denied effective July 12, 2020 and continuing until the claimant earns wages for insured work equal to ten (10) times her weekly benefit amount after her refusal of work date, and provided she is otherwise eligible.

**REMAND:**

The issue of whether the claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa from April 19, 2020 through June 27, 2020 and beginning July 12, 2020 through present date is remanded to the Benefits Bureau for an investigation and determination. The issue of whether the claimant has been overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits is remanded to the Benefits Bureau for an investigation and determination. This issue of whether the claimant has been overpaid Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits is remanded to the Benefits Bureau for an investigation and determination.



---

Dawn Boucher  
Administrative Law Judge

December 31, 2020  
Decision Dated and Mailed

db/mh

**Note to Claimant**

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.