

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

EVAN A GUNDER

Claimant

APPEAL NO. 21A-UI-00336-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COFFEE COMPANY

Employer

OC: 04/12/20

Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 28, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on February 26, 2021. Claimant participated personally. Employer participated by Tara Cronbaugh and Brandon Reimers. Claimant's exhibits A-C and employer's exhibits 1-4 were admitted into evidence.

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: Employer made an offer of work to the claimant on May 27, 2020. That offer included the following terms: The offer was for claimant's regular hours and wages. The offer was made in the 4th week of unemployment. Claimant refused the offer of work because claimant lived with a woman who was immunocompromised, and claimant didn't want to risk her getting sick from him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of 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.

Here, claimant was not able and available for work as he refused work at the same wages and hours received before the pandemic. Benefits are denied as of May 27, 2020

DECISION:

The decision of the representative dated October 28, 2020, reference 01 is modified in favor of respondent. Claimant is not eligible to receive benefits from the date of May 27, 2020 when he was called back to return to work and chose not to do so. Unemployment insurance benefits shall be withheld until claimant has become able and available for work.



Blair A. Bennett
Administrative Law Judge

March 05, 2021
Decision Dated and Mailed

bab/ol

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but 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>.