

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KELECHI A EJIMOFOR**  
Claimant

**QPS EMPLOYMENT GROUP INC**  
Employer

**APPEAL 21A-UI-23293-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Respondent (4R)**

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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:**

The employer/appellant, QPS Employment Group Inc., filed an appeal from the October 5, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2021. The claimant did not participate. The employer participated through Jessica Segner, unemployment coordinator. The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 work and available for work effective August 20, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with QPS Employment Group Inc. in 2017. During his employment, he has worked assignments that included warehouse, trimming, assembler, and order/packer. He had worked first shift previously, and earned wages in the amount of \$12-\$14.00 per hour. His most recent job assignment was for \$12.00 per hour.

On August 20, 2020, employer (through Briana Hart) called claimant to offer him a position as an assembler, beginning on August 24, 2020. It was a full-time position, at \$13.00 per hour, and first shift. The assembler position was consistent with his prior assembler assignment at QPS.

Claimant responded via text message to Ms. Hart on August 20, 2020 that the position did not sound interesting (Employer Exhibit 1) and to look for other assignments. Employer had no

other assignments over \$11.00 per hour to claimant. Claimant did not attend the hearing to explain why he did not accept the position.

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

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits effective August 20, 2020.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has 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).

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.24(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(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.

Employer in this case had work available to claimant effective August 20, 2020. Claimant declined the work, stating it was not “interesting.”

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not appear for the hearing and meet his burden of proof to show he was able and available for work after August 20, 2020. When employees unreasonably limit their working hours, they are considered to be unavailable for work. The employer had work available for the

claimant, but he limited his availability. Therefore, based on the evidence presented, the administrative law judge concludes the claimant was not able to and available for work because he was unwilling to work during hours in which work was available. Regular state unemployment insurance benefits are denied effective August 20, 2020.

The issue of whether claimant has been overpaid any benefits is remanded to the Benefits Bureau for an initial investigation.

**DECISION:**

The October 5, 2021, (reference 04) unemployment insurance decision is modified in favor of employer/appellant. The claimant is not available for insured work effective August 20, 2020, and regular, state-funded unemployment insurance benefits are denied. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

**REMAND:**

The issue of whether claimant has been overpaid any benefits is remanded to the Benefits Bureau for an initial investigation.



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January 14, 2022  
Decision Dated and Mailed

jlb/mh