

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWN J BASCOM
Claimant

DES STAFFING SERVICES INC
Employer

APPEAL 20A-UI-09672-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

On August 14, 2020, the claimant filed an appeal from the August 12, 2020, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 28, 2020. Claimant did not register for the hearing and did not participate. Employer participated through human resource manager Jamie Scott and placement specialist Tone Talbott. Employer's Exhibit 1 is admitted into the record.

ISSUES:

Did the claimant refuse an offer of suitable work?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary staffing agency.

On May 22, 2020, claimant called placement specialist Tone Talbott and requested an assignment. Talbott offered claimant a full-time position at a warehouse working first shift and earning \$13.00 per hour. Talbott informed claimant he could start the job on May 27, 2020. Initially, claimant indicated he was interested in the job. On May 26, 2020, he called Talbott and said he did not want to work at a warehouse due to COVID 19 and his risk of spreading the virus to elderly individuals he lived with.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case, claimant unduly limited his availability for work due to COVID 19. Claimant has not established he was available for work effective May 24, 2020. Benefits are denied effective May 24, 2020.

DECISION:

The August 12, 2020, (reference 04) unemployment insurance decision is reversed. Claimant was not able to and available for work effective the week beginning May 24, 2020.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

September 30, 2020
Decision Dated and Mailed

cal/mh

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 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>.