

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELSEY L BOUGHTON
Claimant

NAZ & BAY INC
Employer

APPEAL 21R-UI-03442-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On October 12, 2020, Kelsey Boughton (claimant) filed a timely appeal from the October 6, 2020, reference 02, unemployment insurance decision that denied benefits because she refused a suitable offer of work with Naz & Bay, Inc. (employer). After due notice was issued, a telephone conference hearing was scheduled to be held on December 10, 2020. The claimant did not respond to the hearing notice and no hearing was held. The administrative law judge (ALJ) issued a default decision. The claimant appealed the default decision to the Employment Appeal Board, who remanded the case for a new hearing.

New hearing notices were mailed to the parties. A telephone hearing was held on March 29, 2021. The claimant participated personally. The employer participated through Onur Bayram, Co-Owner. No exhibits were offered into the record.

ISSUE:

Was a suitable offer of work made to the claimant?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for the employer for approximately eight years as a server. On or about March 16, 2020, the employer laid off all of its employees due to the pandemic. The claimant filed her claim for benefits the same week. The claimant's average weekly wage in the high quarter of the base period is \$257.75.

In mid-April, the employer contacted the claimant to offer her approximately six hours of work a week at \$4.55 an hour plus tips. The claimant declined the offer of work. In June, the employer notified the claimant that they were reopening at fifty percent capacity, giving her approximately 20 hours a week. The claimant again declined to return to work because it was not monetarily feasible to travel for the income she would earn.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not fail to accept a suitable offer of work. Benefits are allowed.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

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.

The offers made were unsuitable, as they did not meet the minimum wage requirements set out above for an offer to be considered suitable. The first offer was made in the claimant's first five

weeks of unemployment. The claimant would earn approximately \$27.30 a week, which is less than her average weekly wage. The second offer was made during the thirteenth through eighteenth weeks of unemployment, which means the offer needed to provide wages of \$180.42 to be considered suitable. Based on the record, the claimant would have only earned \$91 each week, rendering the offer unsuitable. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 6, 2020, reference 02, unemployment insurance decision is reversed. The offers made to the claimant were not considered suitable by Iowa law. Benefits are allowed, provided the claimant is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

April 2, 2021
Decision Dated and Mailed

src/kmj