

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROGER MORTVEDT
Claimant

**PRAIRIE MEADOWS RACETRACK AND
CASINO**
Employer

APPEAL 21A-UI-17379-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)A – Refusal of Suitable Work

STATEMENT OF THE CASE:

On August 6, 2021, Roger Mortvedt (claimant/appellant) filed an appeal from the August 31, 2021, reference 02, unemployment insurance decision that denied benefits based upon refusing an offer of work on June 1, 2020. After due notice was issued, a telephone conference hearing was held on October 1, 2020. The claimant participated. The employer participated through Human Resources Generalist Cali Cain. The administrative law judge took official notice of the administrative record. Exhibit D-1 and D-2 were received into the record.

ISSUES:

Was the claimant's appeal timely? Are there reasonable grounds to consider his appeal as otherwise timely?

Was a suitable offer of work made to the claimant?

If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

The claimant has worked as a full-time photo finish operator for the employer, Prairie Meadows Racetrack and Casino, since 2006. He last worked for the employer on October 12, 2019. The claimant's work is primarily performed during racing season which ends around that time. Although he was retained on its payroll, the claimant was not given any opportunities to work for the employer until the beginning of the next racing season.

On May 3, 2020, the employer laid all of its employees off, including the claimant.

On June 1, 2020, Television Department Manager Ryan Dunn informed the claimant he was being called back to work his position. Ms. Cain did not know whether Mr. Dunn gave a specific start date or pay to the claimant. Ms. Cain explained that Mr. Dunn was not available because

the employer has a made a business decision to not make witnesses with personal knowledge and experience regarding what occurred available to testify. The claimant could not remember. The claimant said he could not return to his position because he has a history of bronchitis and believed he was at increased mortality risk for Covid19 infection and death.

A disqualification decision was mailed to the claimant's address of record on August 31, 2021. (Exhibit D-1) The claimant did not receive the decision. The first notice of disqualification was the three overpayment decisions he received on July 26, 2021 and July 27, 2021. The appeal was sent on August 6, 2021, within the statutory period listed on the overpayment decisions. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal has other reasonable grounds to be considered timely. The administrative law judge further concludes the claimant did not refuse an offer of work, but was not able and available effective June 1, 2020.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decisions, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant declined an offer of work because he was not available.

Iowa Code section 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.

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.

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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

As an initial matter, the administrative law judge observes this is not a case in which the claimant refused to be recalled to his current position. The reason it is not is because the claimant was totally unemployed for more than four consecutive weeks. It is not relevant whether the claimant was on the employer's payroll.

The employer has failed to meet its burden that an offer of work was extended to the claimant. Ms. Cain was not aware if information regarding pay or a specific start date was given to the claimant. It chose to not register Mr. Dunn, who may have had that information from personal knowledge and experience.

Furthermore, the reason the claimant did not return to work was because he was not available due to his own health concerns. Therefore, the claimant is not disqualified from receiving benefits, but is not eligible effective June 1, 2020. Benefits are withheld until such time as claimant makes himself available for work.

DECISION:

The August 31, 2021, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant declined an offer of work but was unavailable at the time. The claimant is not subject to the ten times weekly benefit amount penalty for a work refusal. Benefits are withheld effective June 1, 2020, until such time as the claimant makes himself available for work.



Sean M. Nelson
Administrative Law Judge
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October 08, 2021
Decision Dated and Mailed

smn/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, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.