

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JEFFREY B MUNFORD**  
Claimant

**APPEAL 17A-UI-01483-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RSB ENTERPRISES INC**  
Employer

**OC: 12/11/16**  
**Claimant: Respondent (1)**

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 filed an appeal to the February 1, 2017, (reference 03) initial decision which allowed benefits to the claimant. After due notice, a hearing was scheduled and conducted by telephone on March 2, 2017, before Administrative Law Judge, Jennifer Beckman. The claimant participated personally. The employer participated by way of Randy Balk, Owner. Lynn Balk, Administrative Assistant, also attended. Employer Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

**ISSUE:**

Did the claimant fail to accept a suitable offer of work and if so, 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 performed work for the employer as a mower through the fall season when he was laid off due to weather. The claimant was made aware that while he was temporarily laid off, he may be recalled to perform snow removal when needed (Employer Exhibit 1)

The employer made an offer of work to claimant when he picked up his paycheck on December 16, 2016, when he was informed there was snow coming and temporary snow removal work likely. The employer then stated it also sent the claimant an offer via text message on December 17, 2016, at 12:42 p.m. (Employer Exhibit 1) to perform the temporary snow removal work on December 17, 2016, (that evening), probably to begin at 8:00 p.m. Then at 7:14 p.m., the claimant was sent a second message, indicating the snow removal would not begin until 10:00 p.m. (Employer Exhibit 1), and then a third message, that work would be available December 18, 2016 (Employer Exhibit 1). On December 16, 2016, the claimant informed the employer that he had made plans to celebrate his daughter's birthday during the scheduled time, and would be unavailable. He did not perform work on December 17 or December 18, 2016 as a result.

The claimant's average weekly wage is \$465.00. The asserted offer was made in the first week of unemployment. The claimant did have a valid claim for unemployment insurance benefits at the time.

**ASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant failed to accept a suitable offer of work but was available the majority of the work week.

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.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to

the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has established that a valid offer of work was offered to the claimant, first in person and then followed up via text message.

An offer of temporary work is not, as a matter of law, unsuitable. Suitability of work is a question of fact, and the temporary nature of the work offered is one fact which may be considered in evaluating the suitability of that work. *Norland v. Iowa Department of Job Service*, 412 N.W.2d 904 (Iowa 1987). Even though the offer of employment extended to the claimant on December 16, 2016, was temporary and conditional on snowy weather conditions, the administrative law judge is persuaded that it constituted a valid offer of work, and was reasonable in terms of notice to the claimant, given the nature of the business. Further, it cannot be ignored that the claimant was placed on notice that he would be called for snow removal work when it was available (Employer Exhibit 1), as his mowing season ended. The employer had work available to the claimant, and he declined to work December 17 or 18, 2016, even though work was available.

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for two days over two weeks. However, he has otherwise established he was available for work and therefore no disqualification is warranted.

Iowa Code § 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 Admin. Code r. 871-24.23(41) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. An individual who is not able to work the major portion of a scheduled work week does not meet the eligibility requirements. In this case, the claimant refused to perform work, even though he was temporarily unemployed, because he was unavailable for the work, as he attended his child's birthday. It is unclear why the claimant could not have performed the work and returned to the birthday celebrations or perform work even on December 18, 2016, if the celebrations began on December 17, 2016.

Here, the two days encompassing the work offer straddled two weeks for purposes of unemployment. It is true the claimant was not available one day for the week ending December 17, 2016 and one day for the week ending December 24, 2016, but because he was otherwise available for work, he has established his availability and ability work for the majority of the work week. Therefore no disqualification of benefits is warranted. The claimant is cautioned that given the nature of snow removal work, that he is expected to be available for the majority of his work week, and anticipate short notice job offers. Since the claimant has established he was otherwise available for the majority of the workweek, he meets the requirements of Iowa Code Section 96.4-3. Benefits are allowed.

**DECISION:**

The February 1, 2017, (reference 03) decision is affirmed. The claimant failed to accept a suitable offer of work because he was unavailable at the time. However, the claimant has established he was otherwise available for the majority of the workweek and therefore is allowed benefits, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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