

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW BENTLEY
Claimant

FURNITURE MART USA INC
Employer

APPEAL NO. 20A-UI-06946-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1R)

Iowa Code Section 96.5(3) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Andrew Bentley filed a timely appeal from the June 17, 2020, reference 01, decision that disqualified him for benefits, based on the deputy's conclusion that Mr. Bentley refused recall to suitable work with Furniture Mart USA, Inc. on May 6, 2020. After due notice was issued, a hearing was held on July 31, 2020. Mr. Bentley participated. Pam Koob represented the employer and presented testimony through Marcia Bartolo. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on May 6, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andrew Bentley was employed by Furniture Mart USA, Inc. as a part-time Warehouse Associate. He started the employment in May 2019 and last performed work for the employer on March 26, 2020. Mr. Bentley's wage was \$11.00 per hour. Mr. Bentley averaged about 25 hours per week. The work involved assembling and moving furniture. Mr. Bentley worked on weekends and two other days a week. His work hours were 8:00 a.m. to 5:30 p.m. Marcia Bartolo, Store Manager, was Mr. Bentley's supervisor. Effective March 26, 2020, the employer laid off Mr. Bentley in response to Governor Reynolds' COVID-19 based Proclamation of Disaster Emergency in which the Governor ordered non-essential retail establishments, including furniture stores, to shut down.

In response to the layoff, Mr. Bentley established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set Mr. Bentley's weekly benefit amount at \$160.00. Mr. Bentley made weekly claims for the 11 weeks between March 29, 2020 and June 13, 2020 and received both \$160.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation for each of those 11 weeks. Mr. Bentley remained able to work at all relevant times. Mr. Bentley remained ostensibly available for work until May 6, 2020, when he refused recall to the employment.

At about 1:00 p.m. on Wednesday, May 6, 2020, Ms. Bartolo telephoned and spoke with Mr. Bentley to recall him to the employment. The furniture store had reopened on May 1, 2020 and thereafter remained open. Mr. Bartolo told Mr. Bentley that she needed him back, needed him to work the following Sunday, May 10, 2020. Ms. Bartolo told Mr. Bentley that the employer would initially provide six to 10 hours per week and that the work hours would probably return to the previous level in the next few weeks. Mr. Bentley understood that the duties and the wage would be that same as before the layoff. Mr. Bentley told Ms. Bartolo that he was not interested, that he was looking for a full-time job, and that he was no longer interested in part-time employment. That same evening, Ms. Bartolo called back and left a voicemail message for Mr. Bentley asking again whether Mr. Bentley was declining work and advising that he would lose his unemployment insurance benefit eligibility if he did not accept the work. The employer wanted to give Mr. Bentley another opportunity to return to the employment before the employer commenced its search for a replacement worker. Mr. Bentley elected not to respond to the message.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 for refusing 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.

Iowa Code section 96.7(2)(a)(2)(b) provides as follows:

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

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.

Mr. Bentley was able to work at all relevant times and was ostensibly available for work until the May 6, 2020 refusal.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The evidence in the record establishes that Mr. Bentley refused recall to suitable work on May 6, 2020 without good cause. The recall was to be effective May 10, 2020. The offered work was the same work Mr. Bentley had performed for the employer for 10 months prior to the March 26, 2020. The wage would be the same. The vacancy was attributable only to the COVID-19 based temporary shutdown. The recall offer included the employer's reasonable statement that the employer would get Mr. Bentley back to his regular number of hours in the


ensuing weeks. Mr. Bentley's preference for full-time employment did not provide good cause for refusing recall to the employment. Both the recall and the refusal occurred during the benefit week that ended May 9, 2020 at a time when Mr. Bentley had an active claim for benefits. The weight of the evidence indicates that the work refusal was based largely on Mr. Bentley receiving a substantially greater amount in weekly unemployment insurance benefits than he had made as wages. Based on Mr. Bentley's refusal of the recall to suitable work, he is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The disqualification is effective May 10, 2020. The employer's account shall not be charged for benefits for the period beginning May 10, 2020.

DECISION:

The June 17, 2020, reference 01, decision is affirmed. The claimant refused recall to suitable employment on May 6, 2020 without good cause. Effective May 10, 2020, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular benefits the claimant received for the period beginning May 10, 2020 and the Federal Pandemic Unemployment Compensation the claimant received for the period beginning May 10, 2020.

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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* 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>.



James E. Timberland
Administrative Law Judge

August 6, 2020
Decision Dated and Mailed

jet/mh