

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KATHLEEN TROENDLE

Claimant

APPEAL NO: 18A-UI-06053-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHEP'S RIVERSIDE BAR & GRILL LLC

Employer

OC: 05/06/18

Claimant: Respondent (1R)

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 a timely appeal from the May 25, 2018, (reference 02) unemployment insurance decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 18, 2018. Claimant participated personally. Employer participated through Justin Sheperd. Employer Exhibit 1 was admitted 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.

ISSUES:

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 was employed with this employer as a server/bartender until February 1, 2018, when separation ensued. No subsequent offers of work were made to the claimant.

The claimant established her claim with an effective date of May 6, 2018. The administrative records reflect that when the employer responded to the initial notice of claim, it stated the claimant had refused an offer of work on January 31, 2018. However, the claimant had not yet separated when the claimant allegedly refused to perform work. The employer reported the claimant has permanently separated. The claimant's permanent separation on February 1, 2018 has not yet been determined at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no valid offer of work was made to the claimant.

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.

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.

In this case, the claimant was employed until February 1, 2018 and did not establish a claim for benefits until May 6, 2018. The credible evidence presented does not support that a bona fide offer of work was extended to the claimant by this employer while she had a valid unemployment insurance claim.

The employer, in error, stated in its claim protest that the claimant refused an offer of work on January 31, 2018, when the issue at hand needing to be addressed is whether she may have refused to perform work *in her existing employment*, which ultimately led to separation. Therefore, the administrative law judge concludes there was no valid offer of work made to the claimant for her to decline. Benefits are allowed, provided she is otherwise eligible.

REMAND: The issue of the claimant's permanent separation from employment with Shep's Riverside Bar & Grill LLC., effective February 1, 2018, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The May 25, 2018, (reference 02) decision is affirmed. No valid offer of work was made by the employer. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The issue of the claimant's permanent separation from employment with Shep's Riverside Bar & Grill LLC., effective February 1, 2018, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination:

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn