IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KRISTINA GLENN
Claimant

APPEAL 20A-UI-14585-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE MEADOWS RACETRACK & CASIN
Employer

**OC: 05/03/20
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)a – Refusal of Offer or Recall to Work

STATEMENT OF THE CASE:

Kristina Glenn, the claimant/appellant, filed an appeal from the November 3, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 12, 2021. Ms. Glenn participated and testified. The employer participated through Brian Coy, human resources training/recruiting manager. Official notice was taken of the administrative record.

ISSUES:

Is Ms. Glenn able to and available for work?
Did Ms. Glenn refuse to apply for or accept a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Glenn worked for the employer as a part-time server's assistant. She usually worked Thursday through Sunday from 4:00 p.m. to 11:30 p.m. at $9.15 per hour plus tips. In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. On March 28, the employer closed due to the Governor's Proclamation of Disaster Emergency and furloughed all of its employees, including Ms. Glenn. The employer paid Ms. Glenn her average weekly pay through May 2.

Ms. Glenn filed her initial claim for unemployment insurance (UI) benefits effective May 3, 2020. On June 17, Ms. Glenn applied for and was offered a job at Hy-Vee to begin on July 1. On June 18, the employer recalled Ms. Glenn back to work and informed her that if she didn't return to work her employment would be terminated. Ms. Glenn refused to return to work because she had gotten a new job at Hy-Vee. However, Ms. Glenn didn't tell the employer that was the reason for her refusal to return to work. Ms. Glenn didn't give the employer any reason for her refusal to return to work. The employer terminated Ms. Glenn's employment.

At the hearing, Mr. Coy testified that the employer was disputing Ms. Glenn's claim for UI benefits only after June 18 when she refused to return to work.

Ms. Glenn filed her initial claim for benefits with an effective date of May 3, 2020. Her base period consists of the first quarter of 2019 through the fourth quarter of 2019. The highest wages reported in her base period is in the second quarter of 2019 for $2,357.00. Therefore, her average weekly wage is $181.31. Ms. Glenn's weekly benefit amount is $194.00.

Ms. Glenn has been paid regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation benefits since filing her original claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

In order to be eligible for benefits, Ms. Glenn must first establish that she is able to and available for work.

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 96.19, 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 Code § 96.19(38) 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.

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(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 Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

From May 3 through June 17 Ms. Glenn was total unemployed. Ms. Glenn was able to and available for work but did not work and was not paid during this period due to the employer closing because of the pandemic.

The next issue is whether Ms. Glenn refused a suitable offer of work on June 18. The administrative law judge finds that Ms. Glenn did refuse a suitable offer of work. Ms. Glenn filed her initial claim for benefits with an effective date of May 3, 2020. Her base period consists of the first quarter of 2019 through the fourth quarter of 2019. The highest wages reported in her base period is in the second quarter of 2019 for $2,357.00. Therefore, Ms. Glenn's average weekly wage is $181.31. The offer was made in the seventh week of unemployment. During the seventh week of her unemployment, Ms. Glenn was required to accept an offer of work that paid a weekly wage of $135.98.00 (75% of her Average Weekly Wage). See Iowa Code § 96.5(3)a(1)a. The offer was suitable and Ms. Glenn refused it. Benefits are denied.

DECISION:

The November 3, 2020 (reference 02) unemployment insurance decision is affirmed. Ms. Glenn refused suitable work. Benefits are denied.

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Daniel Zeno
Administrative Law Judge

January 29, 2021_____
Decision Dated and Mailed

dz/scn