

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMUEL R HOOVER
Claimant

IOWA CITY COFFEE COMPANY
Employer

APPEAL 21A-UI-00232-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (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:

On November 19, 2020, Samuel L. Hoover (claimant) filed a timely appeal from the November 10, 2020, reference 01, unemployment insurance decision that denied benefits based on the determination he refused to accept a suitable offer of work with Iowa City Coffee Company (employer). After due notice was issued, a telephone conference hearing was held on February 12, 2021. The claimant participated personally. The employer participated through Paul Cork, Operations Manager, and Tara Cronbaugh, President. The Claimant's Exhibit A was admitted without objection. The employer offered documents, but did not submit them to the Appeal Bureau or the claimant as required and they were not admitted into the record.

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 began working for the employer full-time in October 2019, earning \$10.10 an hour plus an average of \$75.00 in tips each week. In the beginning of January 2020, the claimant requested to work only four days a week and worked an average of 33 hours a week. The claimant filed his claim for benefits effective March 15, after the employer temporarily laid him off on March 17. The claimant and Paul Cork, Operations Manager, remained in contact via text message for the next week. Cork told the claimant it was their intention to have him return and the claimant told Cork that he intended to return.

On May 21, Cork sent a text message to the claimant asking him to return to work for approximately 30 hours a week, 8:00 a.m. to 2:00 p.m. Monday through Friday, earning \$10.10 an hour with an average \$75.00 in tips each week. The claimant's average weekly wage, based on the wages in the high quarter of his base period, is \$477.00. The offer was made in the tenth week of unemployment. The claimant did not respond to the text message.

In July, Tara Cronbaugh, President, texted the claimant and requested an update on his work status. The claimant received the message, but did not respond, as he believed he was no longer employed with the employer. Additionally, he did not necessarily want to return to that position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to accept a suitable offer of work. Benefits are denied.

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.

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.* When 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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The claimant contention that he did not receive the May 21 text message, when he received text messages from the employer at the same phone number before and after that date, is not credible.

The offer was made in the tenth week of unemployment, which means the job would have to offer wages in excess of seventy five percent of \$477.00, or \$357.75, to be suitable. The job that the employer offered included \$303.00 in hourly wages and, at minimum, \$75.00 an hour per week in tips, for a total of \$378.00 each week. The offer of work was suitable and the claimant did not have a good cause reason for the failure to accept it.

DECISION:

The November 10, 2020, reference 01, decision is affirmed. The claimant failed to accept a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

February 24, 2021
Decision Dated and Mailed

src/scn