

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WHITNEY D STRUSE
Claimant

WIG AND PEN ANKENY LLC
Employer

APPEAL 20A-UI-10977-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) - Able and Available
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On September 8, 2020, Whitney Struse (claimant/appellant) filed an appeal from the September 3, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work with employer on May 19, 2020.

After due notice was issued, a telephone conference hearing was held on October 27, 2020. Claimant participated personally. Wig and Pen Ankeny LLC (employer/respondent) participated by owner Brooke Ireland.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Is the claimant able to and available for work?

Did claimant refuse to apply for or accept an offer of suitable work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer on October 3, 2013. On or about March 19, 2020, claimant advised employer that she was resigning due to her pregnancy and the pandemic. Claimant had previously planned to resign on or about her due date, May 28, 2020. Claimant was resigning to pursue her self-employment as a hair stylist. It is unclear whether work was available for claimant had she not resigned, as employer was only partially open at that time.

Claimant was not able and available for work from March 19, 2020 and continuing until approximately June 9, 2020, when she had recovered from her pregnancy and was available to return to work. Claimant had been planning to return to another job at a gym at that time, as that employer had indicated she could work at the front desk with her child. However, there was no work available for her at the gym at that time due to the pandemic.

Claimant had performed some work in her salon from May 16 to May 26, 2020. Claimant stopped filing for unemployment at the end of June, as by then she was devoting herself fully to her self-employment.

Claimant was not offered to return to work with employer and did not decline any such offer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the September 3, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work with employer on May 19, 2020 is REVERSED. Claimant was not offered suitable work nor decline any such offer. Claimant is eligible for benefits for the benefit weeks ending June 13, 20, and 27, 2020. She is otherwise ineligible for the reasons set forth below.

The issue of claimant's separation from employment with employer is REMANDED to the Benefits Bureau for an investigation and decision.

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".

Claimant is not eligible for benefits from the benefit week ending March 21, 2020 and continuing through the benefit week ending June 6, 2020, as she was unavailable due to self-isolating or was otherwise unable to work due to her pregnancy.

Claimant is eligible for benefits from the benefit week ending June 13, 2020 and continuing through the benefit week ending June 27, 2020, as she was able to and available for work but no work was available from claimant's other employer as expected.

Claimant is not eligible for benefits from the benefit week ending July 4, 2020 and continuing to date, as claimant was devoting herself fully to her self-employment from that date and was thus unavailable for work.

DECISION:

The September 3, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work with employer on May 19, 2020 is REVERSED. Claimant was not offered suitable work nor did she decline any such offer. Claimant is eligible for benefits for the benefit weeks ending June 13, 20, and 27, 2020. She is otherwise ineligible for the reasons set forth above.

REMAND:

The issue of claimant's separation from employment with employer is REMANDED to the Benefits Bureau for an investigation and decision.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

October 29, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.