

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM G GORHAM
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 23A-UI-10550-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/27/22
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

William G. Gorham, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) November 3, 2023, (reference 08) unemployment insurance (UI) decision. IWD denied Mr. Gorham REGULAR (state) UI benefits because IWD concluded that he refused recall to suitable work with the employer on September 29, 2023. On November 14, 2023, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Gorham and the employer for a telephone hearing scheduled for November 29, 2023 at 9:00 a.m. On November 28, 2023 at 3:44 p.m., Mr. Gorham requested that the hearing be rescheduled to after December 20, when he will not be working.

The undersigned administrative law judge held a telephone hearing on November 29, 2023. Mr. Gorham participated personally. The employer Sarah Fiedler, human resources manager and Sonora Carter, recruiter. Mr. Gorham withdrew his motion to reschedule the hearing during the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the employer make a suitable offer of work to Mr. Gorham?
If so, did he decline the offer and was it for a good cause reason?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Gorham applied for UI benefits effective November 22, 2022. He worked for the employer from March 2023 through September 1, 2023. The employer assigned him to work at Reiman as a full-time assembler. Reiman paid Mr. Gorham \$17.50 per hour. On September 1, the employer told Mr. Gorham that his assignment was over. Mr. Gorham filed an additional UI claim effective September 3, 2023.

On September 26, Mr. Gorham spoke with Ms. Carter about his job interests. Ms. Carter told Mr. Gorham about a potential full-time, first shift job at AirGas that would pay \$17.00 per hour. Ms. Carter explained that the schedule is 2-2-3 i.e., work two days, off two days, work three

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

days. Mr. Gorham stated that he was interested in the job and Ms. Carter stated that she would send his information to AirGas.

The next day, Ms. Carter contacted Mr. Gorham and offered him the full-time, first shift job at AirGas at a pay rate of \$17.00 per hour with a 2-2-3 schedule. Mr. Gorham told Ms. Carter that he did not have a driver's license due to an Operating While Intoxicated (OWI) conviction. Mr. Gorham asked for the specific start date so he could arrange transportation for the days he would be working. Ms. Carter did not know the start date. The following day, Mr. Gorham contacted Ms. Carter and again asked for the specific start date. Ms. Carter did not know the start date. Mr. Gorham declined the offer.

The employer made the offer to Mr. Gorham in the fourth week after he had filed his most recent UI claim. Mr. Gorham's base period is the Third and Fourth Quarters of 2021, and the First and Second Third Quarters of 2022. Mr. Gorham earned the most amount of money in his base period in the Second Quarter of 2022. Mr. Gorham's average weekly wage during the highest quarter of his base period is \$309.00. Average weekly wage is the total wages in the high quarter divided by thirteen, the total number of weeks in the quarter.²

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 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

² See Iowa Admin. Code r. 871-24.1(130).

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 week of unemployment.

(b) Ninety percent, if the work is offered during the second through the third week of unemployment.

(c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.

(d) Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.

(e) Sixty percent, if the work is offered after the eighth 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(15)i provides:

(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

Cases of "refusal of suitable work without good cause" are subject to a two-step analysis. First, the undersigned must decide whether the offer of work was suitable.³ If the offer was suitable, the undersigned must decision whether claimant had good cause for refusal.⁴ The employer has the burden of proving the offer was suitable. If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious."⁵

³ Iowa Admin. Code 871—24.24(3).

⁴ *Id.*

⁵ *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In this case, the employer made an offer of work to Mr. Gorham on September 28, 2023. The employer offered to pay Mr. Gorham more than 100 percent of his average weekly wage in his fourth week of unemployment after he filed his additional UI claim. The employer made a suitable offer of work to Mr. Gorham. But Mr. Gorham needed to know the specific start date so he could arrange transportation. Had Mr. Gorham accepted the job without knowing the start date, he would have set himself up for failure. Mr. Gorham has established that he refused the employer's suitable offer of work for good cause. Mr. Gorham is eligible for UI benefits.

DECISION:

The November 3, 2023, (reference 08) UI decision is REVERSED. The employer made a suitable offer of work to Mr. Gorham, and he declined the offer for good cause. Since Mr. Gorham had good cause for refusing the offer, he is eligible for UI benefits.



Daniel Zeno
Administrative Law Judge

December 5, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.