IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

AUSTIN D HILL Claimant **SEDONA STAFFING INC** Employer	**APPEAL 21A-UI-03816-JC-T** **ADMINISTRATIVE LAW JUDGE** **DECISION** **OC: 04/05/20** **Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

On January 25, 2021, the employer filed an appeal to the January 20, 2021 (reference 04) initial decision that concluded employer did not make an offer of suitable work to claimant on October 23, 2020. After proper notice, a telephone hearing was conducted on March 31, 2021. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through unemployment benefits administrator, Colleen McGuinty. Kelly Weaver, branch manager, testified. Official notice was taken of the administrative records. Employer Exhibit 1 was admitted.

ISSUES:

Did claimant refuse a suitable offer of work?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for benefits with an effective date of April 5, 2020. His weekly average wage is $930.05.

He most recently worked on assignment in April 2019, earning $10.00 per hour as a general laborer.

On October 23, 2020, claimant was contacted by phone by Ms. Weaver. She extended a job offer for full-time employment, earning $13.62 per hour as a machine operator at West Rock, in Clinton, Iowa. The position was to begin October 30, 2020. Claimant had previously worked on assignment there. Claimant responded to a follow up text on October 26, 2020, declining the position based upon the rate of pay.

He did not attend the hearing to refute the employer's evidence or establish that he was able to and available for work effective October 23, 2020. Claimant has not been making weekly continued claims since June 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits effective October 23, 2020.

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 38, paragraph "b", subparagraph (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 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. (emphasis added)

For an unemployed individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22., *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not appear for the hearing and meet his burden of proof to show he was able and available for work after October 23, 2020. Therefore, the administrative law judge concludes the claimant is not able to and available for work. Benefits are denied.

DECISION:

The January 20, 2021, (reference 04) unemployment insurance decision is modified in favor of employer. The claimant is not available for insured work effective October 23, 2020, and regular, state-funded unemployment insurance benefits are denied. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

Jennifer L. Beckman

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Jennifer L. Beckman
Administrative Law Judge
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April 2, 2021_____
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT:

▪ This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

▪ If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
 www.iowaworkforcedevelopment.gov/pua-information