

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JILL F WEBER**

Claimant

**LUTHERAN HOME FOR THE AGED**

Employer

**APPEAL 19A-UI-01217-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/30/18**

**Claimant: Appellant (4)**

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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:**

Jill F. Weber (claimant) filed a timely appeal from the February 12, 2019, reference 04, unemployment insurance decision that denied benefits based on the determination she refused suitable work with Lutheran Home for the Aged (employer). After due notice was issued, a telephone conference hearing was held on March 1, 2019. The claimant participated personally. The employer participated through Administrator Kellie Van Ree. The claimant offered anonymous written statements into the record; however, they were not admitted as a proper foundation could not be established.

**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?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant filed her claim for benefits effective December 30, 2018 and her weekly benefit amount is \$502.00. The claimant's average weekly wage in the high quarter of her base period is \$839.52. The employer made an offer of work to claimant via telephone on January 3, 2019, during the first week of the claim. That offer included the following terms: \$13.75 an hour working third shift for a guaranteed 32 hours a week for a weekly wage of \$440.00. The claimant declined the position.

The claimant accepted employment with another facility on January 18, 2019 working 24 hours a week at \$13.00 an hour. She began working full-time hours for that facility effective February 10, 2019. She has filed weekly continued claims for benefits each week since filing her claim for unemployment insurance benefits reporting her wages earned.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not fail to accept a suitable offer of work. Benefits are allowed effective December 30, 2018, provided the claimant is otherwise available. The claimant is not able to and available for work effective February 10, 2019 and benefits are denied as of that date.

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.

The offer by the employer was unsuitable for purposes of unemployment insurance eligibility, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. The offer was made during the first week of the claimant's unemployment and the guaranteed hours were not for a weekly wage at one hundred percent of the claimant's average weekly wage. Benefits are allowed effective December 30, 2018, provided the claimant is otherwise eligible.

To be otherwise eligible for unemployment insurance benefits, the claimant must be able to and available for work which is a determination made on a week-by-week basis.

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 Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant began full-time employment with her current employer the week of February 10, 2019. She is removed from the labor market and is no longer available for work. Accordingly, she is not eligible for unemployment insurance effective February 10, 2019. If the claimant needs to claim unemployment insurance benefits in the future, her ability to and availability for work will be evaluated at that time.

**DECISION:**

The February 12, 2019, reference 04, unemployment insurance decision is modified in favor of the appellant. The employer's job offer, for purposes of unemployment insurance eligibility, is not considered suitable. Benefits are allowed effective December 30, 2018, provided the claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

The claimant has been working full-time for her new employer since the week of February 10, 2019 and is removed from the labor market. Benefits are withheld effective February 10, 2019. If the claimant needs to claim unemployment insurance benefits in the future, her ability to and availability for work will be evaluated at that time.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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