

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON E BROOKS
Claimant

DEXTER LAUNDRY INC
Employer

APPEAL 17A-UI-04429-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/04/16
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:

The claimant filed an appeal from the April 19, 2017, (reference 05) unemployment insurance decision that denied benefits on the basis that he refused a suitable offer of work. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2017. The claimant participated and testified. The employer participated through Human Resource Administrator Kathy Baker.

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: Employer made an offer of work to claimant in-person on March 22, 2017. The offer was for full time work, 40 hours per week, at \$15.00 per hour.

The administrative record reflects that claimant filed a claim for benefits with an effective date of December 4, 2016. Claimant's highest quarter of wages in his base period was \$11,062.00 from the second quarter of 2016. Claimant's average weekly wage for the second quarter of 2016 was \$850.92. The offer was made in the thirteenth through eighteenth week of unemployment. Claimant did not accept the offer of work from the employer. Claimant did not accept the offer of work because he thought he would be able to get a higher wage elsewhere and because they could not guarantee first shift hours. Claimant also works part-time as a pastor on Wednesday and Sunday evenings from 7:00 p.m. to 8:30 p.m. and would not be available to work second shift. The employer was not sure at the time the offer was made, whether claimant would be given first or second shift hours.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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.

Iowa Code § 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. 871-24.23(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

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.

The unemployment insurance law under Iowa Code § 96.4(3) requires that a claimant be able to and available for work, and Iowa Code § 96.5(3)a imposes a disqualification on individuals who refuse an offer of suitable work without good cause. In this case, the employer made a valid offer of work to claimant on March 22, 2017. The claimant declined the offer of work because he thought he would be able to get higher wages elsewhere and the employer could not guarantee he would be able to get on working first shift. The wages offered meet the formula found in the unemployment insurance law for suitable work. Claimant could not work the second shift because he also works part-time as a pastor on Sunday and Wednesday nights from 7:00 p.m. to 8:30 p.m. At the time the work was offered it was possible claimant may have been able to work first shift, but this could not be guaranteed. The claimant has not shown good cause for his refusal of the offer of work. The claimant is disqualified for receiving unemployment insurance benefits effective March 22, 2017.

DECISION:

The unemployment insurance decision dated April 19, 2017 (reference 05), is affirmed. The claimant is disqualified from receiving unemployment insurance benefits effective March 22, 2017, and continuing until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs