

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIMMY BURTON**  
Claimant

**L A LEASING INC**  
Employer

**APPEAL 17A-UI-01176-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/16/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

Timmy Burton (claimant) filed a timely appeal from the January 27, 2017 (reference 04) unemployment insurance decision that denied benefits based on the determination he failed to accept a suitable offer of work from L A Leasing, Inc. (employer). After due notice was issued, a telephone conference hearing was held on February 22, 2017. The claimant participated personally. The employer participated through Unemployment Benefits Administrator Colleen McGuinty and Account Manager Billy Reams. Claimant's Exhibit A was received.

**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 worked for the employer in a continuous assignment with its client Premier Tooling. On or about December 15, 2016, the employer had a shut down for the holiday and the claimant was temporarily unemployed from that assignment. The claimant earned \$10.00 an hour at this assignment.

On December 28, 2016, Account Manager Billy Reams contacted the claimant and offered him a one-day assignment with another client, Nordstrom, for the following day. The wage offered for the job is \$9.00 an hour, which is comparable to the prevailing rate of pay for similar work. The claimant's average weekly wage during the third quarter of 2015, the highest quarter of earnings in his base period, was \$223.00, or \$44.60 per day. The offer was made in the second week of his unemployment after reopening his claim on December 18, 2016. The claimant told Reams he was unable to accept the assignment as he had to care for his child and had a doctor's appointment. Reams did not offer the claimant any other assignments that week.

The claimant returned to Premier Tooling on January 3, 2017 at the end of the holiday closure. He and the other temporary employees worked that day and were then told their assignment ended. The claimant has been in contact with the employer, but has not been offered any other positions.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant failed to accept a suitable offer of work but had a good cause reason as he was unavailable for work that day. He was able to and available for work the majority of the work week. Benefits are allowed, provided he is otherwise eligible.

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 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.

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".

The claimant was offered a one-day assignment that would have paid him \$72.00 in gross wages, assuming an eight-hour day. The offer was suitable based on the wages. However, the claimant did not accept the work because he was not available for work that day due to a doctor's appointment and childcare. The claimant was available other days that week, but the employer did not make any other offers of work. The claimant was available the majority of the work week and is considered able to and available for work that week. Accordingly, benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The January 27, 2017 (reference 04) decision is reversed. The claimant failed to accept a suitable offer of work, but had a good cause reason as he was not available for work the one day for which the work was offered. The employer did not communicate any other offers of work to the claimant that week. The claimant was able to work and available for work the rest of the week. Benefits are allowed and any benefits claimed and withheld on this basis shall be paid, provided the claimant is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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