

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

CHEISA T SWEENEY
Claimant

APPEAL NO. 15A-UI-14004-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA LLC
Employer

OC: 02/22/15
Claimant: Appellant (4)

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Cheisa Sweeney (claimant) appealed a representative's December 17, 2015 (reference 02) decision that concluded she was not eligible to receive unemployment insurance benefits because she refused suitable work with Flagger Pros USA (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 12, 2016. The claimant participated personally. The employer participated by Kaleena Middendorf, Human Resources Assistant.

ISSUE:

The issue is whether the claimant refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a new claim for unemployment insurance benefits with an effective date of February 22, 2015. The claimant worked for the employer from September 4, 2013 to November 20, 2015; as a full-time seasonal certified flagger. She filed an additional claim for benefits on November 29, 2015; when her work ended.

On December 2, 2015, the employer offered the claimant a job doing utility work starting on December 2, 2015 paying \$10 per hour. The work would continue for a few weeks. The claimant refused the offer of work because she did not have childcare and needed to attend a child's conference the following day.

The claimant did not have childcare for the two-week period ending December 12, 2015. She was out of town for the two-week period ending December 26, 2015.

The claimant's highest quarter of wages during her base period was the third quarter of 2014, during which her wages totaled \$5,898. The claimant's average weekly wage during her highest quarter of wages was, therefore, \$453.70.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. For the following reasons the administrative law judge concludes she was not.

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 § 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 Admin. Code r. 871-24.23(5) and (8) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

When an employee is spending working hours caring for children or out of town, she is considered to be unavailable for work. The claimant was devoting her time and efforts to caring for her children or out of town. She is considered to be unavailable for work from November 29, 2015 through the week ending December 26, 2015.

DECISION:

The representative's December 17, 2015 (reference 02) decision is modified in favor of the appellant. The claimant is not qualified to receive unemployment insurance benefits through December 26, 2015; due to her unavailability for work. Benefits are allowed as of December 27, 2015, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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