

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROCKFORD L LUBBOCK
PO BOX 118
SHELLSBURG IA 52332

DEKLOTZ CONSTRUCTION INC
6346 – 32ND AVE
SHELLSBURG IA 52332-9550

Appeal Number: 04A-UI-05898-AT
OC: 01-18-04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Rockford L. “Rocky” Lubbock filed a timely appeal from an unemployment insurance decision dated May 12, 2004, reference 03, which disqualified him for benefits effective March 20, 2004 upon a finding that he had refused recall to suitable work. After due notice was issued, a telephone hearing was held June 17, 2004 with Mr. Lubbock participating. President Dennis DeKlotz participated for the employer, DeKlotz Construction, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: On or about March 20, 2004 President Dennis DeKlotz of DeKlotz Construction, Inc. asked Rocky Lubbock if he intended to work for DeKlotz Construction in 2004. Mr. Lubbock responded that he did not know at that time because he was weighing another job offer. On March 31, 2004 Mr. Lubbock advised Mr. DeKlotz that he had accepted employment with Curtis Contracting. Mr. Lubbock has not filed weekly claims since the week ending March 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Lubbock should be disqualified for benefits for refusing recall to suitable work. The administrative law judge concludes that he should not.

Iowa Code Section 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. 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:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Before an individual may be disqualified for refusing recall, the evidence must establish a bona fide offer and a definite refusal. The testimony of both witnesses indicate that Mr. Lubbock did not formally turn down the offer of recall until March 31, 2004. The evidence establishes that he refused recall because he had accepted other work. The administrative law judge concludes that this is an acceptable reason for refusing a job offer. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 12, 2004, reference 03, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

tjc/tjc