

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL G ELLINGSON
Claimant

APPEAL NO. 08A-UI-04173-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DALE D BLAU
NORTH COUNTRY LAWN & LANDSCAPING
Employer

OC: 01/06/08 R: 02
Claimant: Respondent (4)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, North Country Lawn and Landscaping (North Country), filed an appeal from a decision dated April 21, 2008, reference 01. The decision allowed benefits to the claimant, Michael Ellingson. After due notice was issued, a hearing was held by telephone conference call on May 13, 2008. The claimant participated on his own behalf. The employer participated by Owner Dale Blau.

ISSUE:

The issue is whether the claimant refused an offer of work.

FINDINGS OF FACT:

Michael Ellingson began employment with North Country on April 21, 2005 as a full-time seasonal laborer. He worked seasonally in 2005, 2006, and 2007, and his last day of work was November 19, 2007. At that time, he was laid off for the season by Owner Dale Blau.

In late February 2008, Mr. Blau began leaving voice mail messages for Mr. Ellingson, asking the claimant to call him back to discuss the coming season's work. The claimant received and listened to the messages but did not call the employer back. He was looking for other work and did not want to limit his options one way or the other.

The seasonal employment at North Country began on March 26, 2008, and the claimant started another job on April 7, 2008. He continued to file his claim for the weeks ending March 29 and April 5, 2008, but indicated he had no objection to returning the benefits for those two weeks as he did not contact the employer one way or the other, even though he knew continuing work was available to him.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant knew work was available to him, as he received several messages from the employer that he declined to return. He could have begun working effective March 26, 2008, but did not do so because he did not contact the employer as requested. From past years' experience, the claimant had an understanding of the manner in which this employment resumed every year, and his refusal to return the calls is de facto refusal of work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 21, 2008, reference 01, is modified in favor of the appellant. Michael Ellingson is disqualified effective the week ending March 29, 2008, for refusing an offer of work. He is overpaid in the amount of \$560.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw