

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

JOSH L SIMS
508 W MAIN ST
NEW LONDON IA 52645-1311

CARL A NELSON & COMPANY INC
PO BOX 698
BURLINGTON IA 52601

AMENDED
Appeal Number: 06A-UI-06037-CT
OC: 04/30/06 R: 04
Claimant: Respondent (3)

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 Work
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Carl A. Nelson & Company, Inc. (Nelson) filed an appeal from a representative's decision dated June 5, 2006, reference 01, which held that Josh Sims was ineligible to receive job insurance benefits for the two weeks ending May 20, 2006 because he did not have transportation to work. The appeal was based on the contention that the disqualification period should exceed two weeks. After due notice was issued, a hearing was held by telephone on June 29, 2006. Mr. Sims participated personally. The employer participated by Doug Sams, Director of Safety/Human Resources.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sims began working for Nelson on May 10, 2005 as a full-time construction craftsman. He has performed services for the employer in Burlington, Muscatine and Eddyville. Work is usually performed within 200 miles of Burlington. On April 6, 2006, Mr. Sims was laid off but was not given a return-to-work date.

On Thursday, May 11, Mr. Sims was contacted by telephone and offered work on a job site in Wilton, Iowa, approximately 63 miles from his home. The work was to start on Monday, May 15. He would have performed the same work during the same hours and at the same rate of pay as before the layoff. Mr. Sims declined the work and stated he did not want to make the drive. He had made childcare arrangements by May 15. Mr. Sims and his wife had only one vehicle in operation as of May 15.

Mr. Sims has received \$367.00 in job insurance benefits for each week beginning May 14 and ending July 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed as a result of Mr. Sims refusing recall to work. He was being recalled to the same work he had been laid off from, only at a different location. The only reason he gave the employer for not accepting the work was that he did not want to drive to Wilton. Mr. Sims had performed services for the employer in Eddyville, a distance of approximately 65 miles from his home. Therefore, the distance to Wilton was not unreasonable.

Mr. Sims contended during the hearing that he did not have childcare arranged when he was contacted on May 11. However, he had arranged childcare by May 15 but did not contact the employer to indicate he could return to work. Mr. Sims testified that his family had only one vehicle running as of May 11. However, he was unsure as to whether the lack of a second vehicle would have rendered him unable to accept the work in Wilton. The evidence failed to establish that Mr. Sims was unavailable for work.

After considering all of the evidence, the administrative law judge concludes that good cause has not been established for the refusal of recall. Therefore, benefits are denied as of the Sunday of the week in which Mr. Sims was to return to work, May 14, 2006. He has received benefits during this period. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 5, 2006, reference 01, is hereby modified. Mr. Sims refused recall to suitable work with Nelson. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Sims has been overpaid \$2,202.00 in job insurance benefits.

cfc/cs/pjs