

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

TERRANCE J WERMES
929 N ALICE ST
SIOUX CITY IA 51105

JAMES HANSCOM LLC
LITTLE CAESARS PIZZA
2121 HAMILTON BLVD
SIOUX CITY IA 51104

Appeal Number: 05A-UI-11248-DWT
OC: 10/09/05 R: 01
Claimant: Respondent (1)

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 Offer of Work

STATEMENT OF THE CASE:

Little Caesars Pizza (employer) appealed a representative's October 25, 2005 decision (reference 01) that concluded Terrance J. Wermes (claimant) was qualified to receive unemployment insurance benefits even though he declined the employer's offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2005. The claimant participated in the hearing. James Hanscom, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the claimant be disqualified from receiving benefits when he declined the employer's offer of work on October 5, 2005?

FINDINGS OF FACT:

The claimant started working for the employer on August 28, 2004. The claimant worked as a part-time delivery driver. Between deliveries or about 15 percent of his time, the claimant worked in the restaurant and performed various tasks. The employer thought the claimant was good at the landing position where pizzas are cut and boxed. As a driver the claimant earned \$6.00 an hour, \$2.00 for every delivery he made plus tips. The claimant usually made at least \$10.00 to 12.00 an hour as a delivery driver.

On October 5, 2005, the employer informed the claimant a business decision had been made to immediately discontinue the delivery service. This meant the claimant no longer had a job driving and delivering pizzas. The employer offered the claimant continued employment as an inside person. The employer offered the claimant the same hours that he had been working and the same hourly wage of \$6.00 an hour.

On October 5, 2005, the claimant declined the employer's offer of continuous inside work because he considered himself a professional driver, all of his work experience was as a professional driver and the employer had hired him as a driver. The claimant did not like to work the landing position and this is the job the employer would have given him because the employee who had been working the landing position had recently quit. The claimant did not like the work environment if he had to work inside all the time.

The claimant filed a claim for unemployment insurance benefits during the week of October 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he declines an offer of suitable work without good cause. Iowa Code §96.5-3-a. The law requires that both the offer of work and the claimant's accompanying refusal must occur within the individual's benefit year because the disqualification in Iowa Code §96.5-3-a can be imposed. 871 IAC 24.24(8).

The employer made the offer of continued work to the claimant before the claimant established a benefit year. As a result, the disqualification in Iowa Code §96.5-3-a cannot be imposed upon the claimant. The claimant is not disqualified from receiving benefits based on a refusal issue.

DECISION:

The representative's October 25, 2005 decision (reference 01) is affirmed. The claimant is not disqualified from receiving benefits since he declined an offer of work before he established a claim for unemployment insurance benefits. As of October 9, 2005, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

dlw/tjc