

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKEY HARE**  
Claimant

**APPEAL NO. 09A-UI-06650-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCH BUILDERS INC**  
Employer

**OC: 12/28/08**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(3)a – Work Refusal  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 3, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 27, 2009. Claimant participated. Employer participated through Chris Phillipp.

**ISSUE:**

The issue is whether claimant's appeal is timely and if claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant did not receive the representative's decision dated March 3, 2009 and filed his appeal after having received the overpayment decision.

Claimant was temporarily laid off due to lack of work the last week of December 2008. On Monday January 19, Phillipp told him needed him back by Wednesday, January 28 because his former supervisor was moving to Michigan. Claimant agreed to report but did not so employer contacted the local office and advised employer to send him a letter but did not specify that it should be certified, return receipt requested. A letter instructing claimant to return to work by January 30 was sent the same day. Claimant insists he did not receive the recall letter but acknowledged receiving it in his fact-finding interview statement on March 2 and on Thursday, January 29 claimant called Phillipp and "threw a tantrum" saying he was working for someone who loaned him money, called him a "terrible boss" and said he would never work for him again. The next employee in line for a call-back was Will who returned to work and is still working today. Claimant is eligible to reapply for work when the next advertisement for hiring is placed with the Cedar Rapids Gazette.

## REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

While the administrative law judge (ALJ) doubts claimant's insistence he did not receive the decision because he also claimed he did not get the employer's recall letter, which contradicted his fact-finding interview statement. However giving the claimant the benefit of the doubt, he did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason.

Iowa Code § 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.

Claimant's credibility is in question because of the reasons cited in the paragraph about the timeliness of the appeal. Since he admitted receiving the recall letter in the fact-finding interview and has altered his statement since the disqualification, the first statement will be accepted as credible. He refused a suitable offer of work and did not have a good cause reason for doing so. Benefits are denied.

**DECISION:**

The March 3, 2009, reference 01, decision is affirmed. The claimant's appeal is timely. Claimant did refuse an offer of work made outside of his benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are withheld until such

time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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