

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY J GRIFFIN
Claimant

APPEAL NO. 12A-UI-06383-VST

CITY OF EMMETSBURG
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/12
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 22, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 25, 2012. Claimant participated. The claimant was represented by John Sandy, attorney at law. The employer participated John Bird, city administrator and Jill Kliegl, finance director. The employer was represented by Brian Thus, attorney at law. The record consists of the testimony of Kelly Griffin and the testimony of John Bird.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer as a seasonal dredge operator. The employer owns a dredge and employs seasonal workers to dredge the silt from Five Island Lake. The season starts as soon as possible and usually ends in December. Each December the dredge operators are terminated and must re-apply the following year. A new application must be filled out. The claimant worked as a dredge operator for seven years. His most recent employment ended on December 9, 2011.

The claimant did not reapply for his position in 2012. The employer was quite surprised by this and a member of the city council called the claimant and urged him to apply. The time for filing applications was extended for the claimant. A special city council meeting was set for March 26, 2012, for purposes of considering the claimant's application. The claimant still did not put in an application. No job offer was ever extended to the claimant by the employer.

REASONING AND CONCLUSIONS OF LAW:

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....

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.

The unemployment insurance rules require a personal offer of work to an actual job opening and a definite refusal of the offer before a claimant can be found to have refused an offer of suitable work. 871 IAC 24.24(1).

The evidence in this case established that no personal offer of work was made to the claimant and there was no definite refusal of an offer by the claimant. A verbal request to file an application does not meet the requirements of a personal offer of work. Mr. Bird testified that no offer of work to an actual job opening was made by the employer. Accordingly, the claimant cannot be disqualified due to a work refusal. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated May 22, 2012, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs