

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

THOMAS L FOGARTY
826 E 28TH CT
DES MOINES IA 50317

SECURITAS SECURITY SERVICES
USA INC
c/o SHEAKLEY UNISERVICE INC
PO BOX 429503
CINCINNATI OH 45242

AMENDED
Appeal Number: 05A-UI-06091-S2T
OC: 02/27/05 R: 02
Claimant: Respondent (2)

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 – Failure to Accept Suitable Work
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Securitas Security Services USA (employer) appealed a representative's May 27, 2005 decision (reference 02) that concluded Thomas Fogarty (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2005. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer was represented by David Schwab, Hearings Representative, and participated by Erik Lysne, Branch Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 22, 2003. He worked as a full-time security officer assigned to Eagle Iron and his final rate of pay was \$7.50 per week. On February 19, 2005, the claimant left work on medical leave. He requested a different work assignment because he had to walk four to six hours at Eagle Iron. On March 1, 2005, the claimant was released to return to work without restrictions. The employer offered him a position at the United Parcel Service (UPS) hub. The UPS position paid \$9.00 per hour, did not require hours of walking and was located approximately one mile from Eagle Iron. The title of security officer was the same at both locations. The claimant refused the position at UPS because he did not want to work around trucks and he could not earn more than \$8.00 per hour and maintain his Social Security benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant failed to accept an offer of suitable work. For the following reasons, the administrative law judge concludes he did.

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 has the burden of proof to show the offer of work was not suitable. The claimant did not participate in the appeal hearing and no evidence of unsuitability was presented at the hearing. Consequently, the claimant did not meet his burden of proof to show the offer of work was not suitable. Benefits are denied.

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 benefits in the amount of \$3,009.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The unemployment insurance decision dated May 27, 2005 (reference 02) is reversed. The claimant is not qualified to receive unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$3,009.00.

bas/kjw