

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN A TOBIN**  
Claimant

**APPEAL NO. 13A-UI-01432-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREG'S LAWN SERVICE INC**  
Employer

**OC: 07/15/12**  
**Claimant: Respondent (2R)**

Section 96.5-3-a –Work Refusal  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from the representative's decision dated February 1, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 8, 2013. Although the claimant responded to the hearing notice and provided a telephone number at which he was supposed to be available, the claimant did not answer his phone when called by the administrative law judge. The employer participated by Greg Scharf, president, and Linda Simon, office manager. The record consists of the testimony of Greg Scharf; the testimony of Linda Simon; and Employer's Exhibits 1-8.

**ISSUES:**

Whether the claimant refused an offer of suitable work; and  
Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a landscaping and snow removal business. The claimant was hired on August 15, 2011, as a full-time mowing laborer. He also did part-time work as a foreman for a sidewalk crew. The claimant was laid off on November 26, 2012.

On November 26, 2012, the claimant signed an agreement concerning his work during snow events. In pertinent part, that agreement states:

I, Ryan Tobin, hereby acknowledge that I am going on temporary unemployment and if I do not show up for a now event, I will self terminate my employment at Greg's Lawn Service, Inc. I understand it is my responsibility to monitor the weather, so I'm prepared for the call at any time. I understand that I can be reached at the following phone numbers

and if I haven't received a call and it is snowing, **it is my responsibility to call and check in.**

(Exhibit 1)(emphasis in the original)

The claimant did show up on December 16, 2012, and December 20, 2012, when called for snow duty. The claimant did not respond to a call that went out at 11:09 p.m. on December 20, 2012. Greg Scharf personally called the claimant three times and got no answer. Work was available on December 21, 2012.

#### **REASONING AND CONCLUSIONS OF LAW:**

An individual who fails, without good cause, to accept suitable work when offered to that individual is disqualified from receiving unemployment insurance benefits. Iowa Code Section 96.5-3-A. In this case, the evidence established that the claimant refused suitable work on December 21, 2012. The claimant knew that he was supposed to be available for snow removal duty when it was snowing and when called by the employer. The employer made numerous efforts to contact the claimant for snow removal work on December 21, 2012. The claimant's failure to make any response constitutes a refusal to accept suitable work when offered. Benefits are denied effective December 21, 2012.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

**DECISION:**

The unemployment insurance decision dated February 1, 2013, reference 01, is reversed. The claimant refused an offer of suitable work on December 21, 2012. Benefits are denied as of December 21, 2012. The overpayment issue is remanded to the claims section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs