

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

DWAINE H HIGGINS  
1409 – 3<sup>RD</sup> AVE W  
SPENCER IA 51301

GINGER PAINTING & SANDBLASTING INC  
610 – 11<sup>TH</sup> AVE SW  
PO BOX 761  
SPENCER IA 51301-0761

Appeal Number: 04A-UI-00156-CT  
OC: 12/22/02 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Ginger Paining & Sandblasting, Inc. (Ginger) filed an appeal from a representative's decision dated December 22, 2003, reference 02, which held that no work had been offered to Dwaine Higgins on November 23, 2003. After due notice was issued, a hearing was held by telephone on January 27, 2004. The employer participated by Rebecca Ginger, Vice President. Mr. Higgins did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Higgins has been employed by Ginger for approximately five years. He filed an additional claim for job insurance benefits effective November 2, 2003. He had not been laid off at that point. He was given permission to take the week of November 24 through 28 off. There were to be only three working days that week because of the Thanksgiving holiday. Mr. Higgins did not want to drive to the out-of-town job site for only three days of work. There would have been approximately 27 hours of work that week. He chose not to perform available work. Mr. Higgins was paid \$314.00 in job insurance benefits for the week ending November 29, 2003.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Higgins is entitled to job insurance benefits for the week ending November 29, 2003. He chose not to work that week when he could have worked for approximately 27 hours. As such, he was voluntarily unemployed the week ending November 29. If he was not available to work the major portion of the scheduled workweek for his regular employer, he would not satisfy the availability requirements of Iowa Code Section 96.4(3). See 871 IAC 24.23(29). Availability for work is one of the threshold requirements for the receipt of job insurance benefits. For the reasons stated above, it is concluded that Mr. Higgins was not eligible to receive job insurance benefits for the week ending November 29, 2003. He has been overpaid \$314.00 in job insurance benefits for the week.

DECISION:

The representative's decision dated December 22, 2003, reference 02, is hereby reversed as to result. Mr. Higgins is ineligible to receive job insurance benefits for the week ending November 29, 2003, as he was voluntarily unemployed and not available for work. He has been overpaid \$314.00 in job insurance benefits.

cfc/b