

**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 R CLEGHORN
3190 NE 46TH AVE
DES MOINES IA 50317**

**SUPER LUBE SERVICE CENTER
KARL HETH
1012 GRAND AVE
WEST DES MOINES IA 50265-3501**

**Appeal Number: 05A-UI-08115-DT
OC: 06/26/05 R: 02
Claimant: Respondent (1)**

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 – Work Refusal
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Super Lube Service Center (employer) appealed a representative's July 28, 2005 decision (reference 01) that concluded Thomas R. Cleghorn (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2005. The claimant participated in the hearing. Leon Wennekamp appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant refuse a offer of suitable work without good cause? Is he able and available for work?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on February 15, 2004. He worked as a technician in the employer's lube and oil business. He was laid off for lack of work on November 13, 2004. From December 29, 2004 through June 26, 2005, the claimant was incarcerated. He contacted Mr. Wennekamp, the store manager, on June 27, 2005 to inquire whether there was work available, but an open position had just been filled. Mr. Wennekamp had been interested in rehiring him in May of 2005, but did not know how to contact the claimant.

The claimant established an initial unemployment insurance benefit year effective January 25, 2004. He reopened that by filing an additional claim effective November 7, 2004 after his layoff from the employer. The last week he made a weekly claim under his 2004 claim year was the week ending December 24, 2004. His 2004 claim year then expired January 23, 2005. After his release from jail and his contact to Mr. Wennekamp, learning that a position was not currently available, the claimant established a second claim year effective June 26, 2005.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work.

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.

871 IAC 24.24(1)a provides:

- (1) Bona fide offer of work.
 - a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(8) provides:

- (8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

In this case, there was no bona fide offer of work and no definite refusal of work. Further, at the time the employer had a position it wished to offer the claimant, the claimant did not have an open benefit year. Benefits are allowed, if the claimant is otherwise eligible.

The next issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

If a claimant is in jail or prison, he is not available for work. 871 IAC 24.23(12). There was a period of time that the claimant was not able and available for work, and therefore ineligible to receive benefits during that time, but the claimant did not make any claim for benefits during the period that he was incarcerated. Once the condition of incarceration was lifted, he became able and available for work once more, and resumed his status as eligible for benefits as it was as of his layoff from the employer, provided he was otherwise eligible.

DECISION:

The representative's July 28, 2001 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work. He has been able and available for work as of June 26, 2005. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs