

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

ROMAIN F HICKS
1883 QUEBEC AVE
STUART IA 50250

ADVANCE SERVICES INC
c/o TALX UCM SERVICES
P O BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-07804-HT
OC: 06/26/05 R: 03
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 – Refusal of Work

STATEMENT OF THE CASE:

The employer, Advance Services, filed an appeal from a decision dated July 28, 2005, reference 03. The decision allowed benefits to the claimant, Romain Hicks. After due notice was issued a hearing was held by telephone conference call on August 16, 2005. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Mindy Shakelford.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Romain Hicks filed a claim for unemployment

benefits with an effective date of June 26, 2005. His weekly benefit amount is \$274.00 and his average weekly wage during his base period was \$443.20.

On July 5, 2005, Advanced Services Human Resources Coordinator Mindy Shakelford contacted him by phone and offered him an assignment in Winterset Iowa as a general production worker. The wage was \$11.00 an hour which would go up to \$11.50 after two weeks of training. He was also asked to come to the employer's office to update his paperwork and indicate any changes in the type of work he was willing to accept, the distance he was willing to travel and any other changes in his status. He declined both to accept the job and to come in to update his profile.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 refused the offer of work for reasons which are not in the record since he did not participate in the hearing. However, the record does establish that the job he was offered paid less than 100 percent of his average weekly wage during his base period. Although there was a raise promised after two weeks, there is no guarantee that the client company would have kept him on. Although the difference between his average weekly wage and what this job offered is very minimal, the fact remains it did not offer 100 percent of his average weekly wage and is, therefore, unsuitable under the provisions of the above Code section.

DECISION:

The representative's decision of July 28, 2005, reference 03, is affirmed. Romain Hicks is qualified for benefits provided he is otherwise eligible.

bgh/tjc