

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

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BE & K CONSTRUCTION CO
C/O TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02816-SWT
OC: 12/26/05 R: 04
Claimant: Appellant (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 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 10, 2005, reference 02, that concluded he refused suitable work without good cause. A telephone hearing was held on April 5, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Marla Clancy participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 26, 2004. The claimant had worked as an electrician for Equistar for about 30 years. His rate of pay when he left employment was \$26.00 per hour.

On February 28, 2004, the claimant refused an offer of work from BE & K Construction. He was offered a job as an electrician assigned to work at the Archer-Daniels-Midland at a rate of pay of \$19.88 per hour for full-time work. The claimant declined the job because the job involved a considerable risk to his safety due to the bad condition of the plant, the disrepair of the walkways in the plant, and the absence of written electrical plans for the plant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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. . . .

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.

The work in this case was refused in the tenth week of unemployment. Seventy-five percent of the average weekly wage based on his high quarter of earnings would be \$780.00. The work offered was \$795.20 per week.

Although the work met the wage requirement of Iowa Code section 96.5-3-a, the evidence establishes that the work involved substantial risk to the claimant's safety, which would make the work unsuitable and gave the claimant good cause to refuse the work. The employer's representative acknowledged the safety hazards at the plant.

The employer's account is not chargeable for any benefits paid to the claimant since it has never employed the claimant.

DECISION:

The unemployment insurance decision dated March 10, 2005, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs