

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN HERNANDEZ**  
Claimant

**APPEAL NO. 08A-UI-04045-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRAMER & ASSOCIATES INC**  
Employer

**OC: 12-02-07 R: 02  
Claimant: Respondent (5)**

Section 96.4-3 – Able and Available  
Section 96.5-3-a – Recall to Suitable Work

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 15, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 12, 2008. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Steve Tuttle, Secretary/Treasurer/Controller, and Lisa Croyle, CPA, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether he refused a recall to suitable work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant works as a full-time general laborer for Cramer & Associates. He was hired April 26, 2006. The employer does heavy highway bridge construction and the work is seasonal. The claimant was laid off November 20, 2007. Beginning the first week of March 2008 the employer attempted to contact the claimant about returning to work but was unable to reach him. On March 24, 2008, the employer sent the claimant a letter stating it was trying to reach him to return to work and he should contact his supervisor immediately (Employer's Exhibit One). On April 3, 2008, the claimant called his supervisor and said he was working for a farmer and he did not plan to return to his construction job for two months but would like a job when he finished (Employer's Exhibit Two).

The claimant has not claimed unemployment insurance benefits since the week ending March 22, 2008.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work and did refuse a suitable recall for suitable work.

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".

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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 employer had work available for the claimant at the beginning of March 2008 but was unable to contact him until March 24, 2008, when it sent a letter telling him it was ready for him to return to work. The claimant notified the employer April 3, 2008, that he is working. Because he is working full-time for another employer and does not intend to return for approximately two months, he is not able and available for work and did refuse recall to a suitable offer of work. In this case, however, the claimant stopped collecting unemployment insurance benefits when he began working for the new, temporary employer. Accordingly, benefits are allowed through the week ending March 22, 2008.

**DECISION:**

The April 15, 2008, reference 01, decision is modified with no effect. The claimant is not able to work and available for work effective March 24, 2008, and did refuse a recall to suitable work. Benefits are allowed through the week ending March 22, 2008.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw