

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

DENNIS L NELSON
201 E 21ST #3
SPENCER IA 51301

KARDELL LEASING COMPANY
PO BOX 232
SPENCER IA 51301-0232

Appeal Number: 05A-UI-00134-CT
OC: 11/28/04 R: 01
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 – Refusal of Work

STATEMENT OF THE CASE:

Dennis Nelson filed an appeal from a representative's decision dated December 29, 2004, reference 03, which denied benefits on a finding that he had refused an offer of suitable work from Kardell Leasing Company (Kardell). After due notice was issued, a hearing was held by telephone on January 20, 2004. Mr. Nelson participated personally. The employer participated by Bruce Kardell, President.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Nelson was last employed by Kardell on August 16,

2004 as an over-the-road truck driver. He quit the employment after he found another job which paid the same but allowed him to be at home each night. He filed a claim for job insurance benefits effective November 28, 2004 due to a layoff from his new employment. Workforce Development has designated him as group code "3" because he is on a temporary layoff.

On December 7, 2004, Kardell contacted Mr. Nelson and offered him the same work he had quit in August. He was to be paid 22 percent of the gross revenue of the truck. He declined the work but did not specify a reason for doing so. He has wage credits from Kardell in all four quarters of the base period of his claim. The lowest earnings were during the first quarter of 2004 when he earned \$2,947.38. The highest earnings were during the third quarter of 2003 when he earned \$4,155.27.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed for Mr. Nelson's December 7, 2004 refusal of work with Kardell. An individual who refuses an offer of suitable work without good cause is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. As a group code "3" claimant, Mr. Nelson is not required to actively and earnestly seek work as required by Iowa Code section 96.4(3). Since he is not required to look for work, it follows that he should not be disqualified for refusing an offer of work, unless that offer comes from the employer that laid him off.

The administrative law judge has also considered the wages being offered by Kardell. Mr. Nelson was not going to receive an hourly rate of pay or a set salary. His pay was to be based on the gross revenue of the truck he drove. Because the pay cannot be precisely calculated, the administrative law judge believes it would be appropriate to compare the wages being offered in December to those wages earned during that quarter of the base period in which wages were the lowest. Since the future pay is speculative, it should be compared to the minimum amount Mr. Nelson had earned from Kardell in the past. His average weekly earnings during the lowest quarter of earnings were \$226.72. This is less than the \$319.64 he averaged each week during his highest quarter of earnings.

The work offered Mr. Nelson by Kardell on December 7 was offered during his second week of unemployment. Therefore, the work had to pay at least 100 percent of the average weekly wage paid during that quarter of the base period in which the wages were highest. Because the job did not, no disqualification may be imposed for the refusal. The administrative law judge notes that Kardell is not being charged for benefits paid to Mr. Nelson. The representative's decision of December 14, 2004, reference 02, relieved Kardell of benefit charges because Mr. Nelson had left his employment in good faith to accept other work.

DECISION:

The representative's decision dated December 29, 2004, reference 03, is hereby reversed. No disqualification is imposed for Mr. Nelson's December 7, 2004 refusal of work with Kardell. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/sc