

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA L CARMICHAEL**  
Claimant

**APPEAL NO. 12A-UI-11929-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANNA ENTERPRISES**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (2-R)**

Section 96.5(3)a – Refusal of Work

**STATEMENT OF THE CASE:**

The employer, Anna Enterprises, filed an appeal from a decision dated October 2, 2012, reference 02. The decision allowed benefits to the claimant, Joshua Carmichael. After due notice was issued, a hearing was held by telephone conference call on October 29, 2012. The claimant did not participate on his own behalf but offered testimony from his spouse Stephanie McChesney. The employer participated by Manager Bill Van Sloun.

**ISSUE:**

The issue is whether the claimant refused on offer of suitable work.

**FINDINGS OF FACT:**

Joshua Carmichael began working for Anna Enterprises August 1, 2012. In his application and subsequent interview prior to hiring, he indicated he would be willing and able to work in Adel and Des Moines.

His first assignment was at United Brick and Tile and it ended September 7, 2012, due to lack of work. The supervisor there said he would likely be called back, but there was no definite return to work date. Mr. Carmichael called the employer's office to report he was laid off and he was offered another assignment immediately which he refused before he could be told any of the details because it was too far to drive. It was in West Des Moines and within his specified availability area. He also refused a job offered to him on October 10, 2012, for the same reason.

It is not the commuting distance, per se, which caused him refuse, but because his vehicle is unreliable with a tendency to break down if driven too many miles.

Joshua Carmichael has received unemployment benefits since filing a claim with an effective date of September 9, 2012.

## REASONING AND CONCLUSIONS OF LAW:

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 was offered two jobs once his original assignment had ended, and both he refused. The reason for the refusal was his lack of reliable transportation. This is not a temporary situation of a day or two but apparently permanent, at least until new, reliable transportation is obtained. He originally indicated he was available in the Des Moines, Iowa, area, where a majority of the work was available, but would not accept assignment there when offered. This is a refusal of work without good cause and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 2, 2012, reference 02, is reversed. Joshua Carmichael is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw