

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

EMILIO A ALAS
1105 FREMONT ST
DES MOINES IA 50316

CENTIMARK CORPORATION
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-00109-S2T
OC: 11/20/05 R: 02
Claimant: Respondent (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 to Accept Suitable Work
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Centimark (employer) appealed a representative's December 23, 2005 decision (reference 01) that concluded Emilio Alas (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2006. The claimant participated personally through Olga Ayella, Interpreter. The employer participated by Robert Lampe, Operations Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in or about the year 2000 as a

full-time production foreman. The claimant led a crew of men that worked where ever in the country the employer sent the crew. In the fall of 2005, the claimant started building a house and the crew helped him. When he decided to work on the house, he and the crew told the employer they could not work. While working on the house the claimant told the employer he refused to work out of state for any length of time. The crew followed the claimant's direction.

In November 2005, the employer directed the claimant to work in Texas. The claimant refused and filed for unemployment insurance benefits with an effective date of November 20, 2005. The claimant continued to work for the employer whenever the employer had a job in Iowa.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. For the following reasons, the administrative law judge concludes he is not. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4). The claimant was not able and available for work.

871 IAC 24.23(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The employer offered the claimant work which was within the claimant's normal duties. The claimant refused the work because the claimant decided to limit his work to a specific area. Without a prior specific agreement between the employer and employee, the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification. 871 IAC 24.24 (10). The work offered to the claimant was suitable work, because the employer and claimant had a prior agreement for the claimant to work all over the country. The claimant is disqualified from receiving unemployment insurance benefits, because he was not available for work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits in the amount of \$2,264.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's December 23, 2005 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits, because he was not available for work. The claimant is overpaid benefits in the amount of \$2,264.00.

bas/kjw