

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S SINES

Claimant

APPEAL NO. 09A-UI-17429-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RODNEY CHRISTNER CONSTRUCTION

Employer

OC: 09/13/09

Claimant: Appellant (2)

Section 96.5(3)a – Refusal of Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Michael Sines, filed an appeal from a decision dated October 20, 2009, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 29, 2009. The claimant participated on his own behalf. The employer, Rodney Christner Construction did not provide a telephone number where a witness could be contacted and did not participate. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on October 20, 2009. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 30, 2009. The appeal was not filed until November 17, 2009, which is after the date noticed on the decision. Mr. Sines claimed he faxed an appeal on October 30, 2009, but it was not received. He checked with his local Workforce Center who gave him the toll-free number of the Appeals Section in Des Moines, Iowa. He was told no appeal had been received and faxed another appeal at that time.

Michael Sines was employed by Rodney Christner Construction beginning in June 2009, as a full-time laborer. He was laid off effective September 13, 2009, while the owner was on vacation. Mr. Christner had told him not to return to work until he or the foreman, Ben Asbury, called him. On September 21, 2009, another employee, Derrick, showed up at his door to drive him to work but the claimant did not go because he had not received a call to return to work. He did call Mr. Christner and left a message asking if he should return to work but never got a call in return.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant maintains he did fax an appeal on the last day, but it was not received. There is nothing in the record to dispute this and the appeal will be accepted as timely.

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 has asserted he was told on September 13, 2009, not to return to work until Mr. Christner or the foreman called with a specific date for him to start back. Mr. Sines maintains he never received any call from the employer and did not return to work. There is nothing in the record to dispute this testimony and the administrative law judge concludes the claimant did not refuse an offer of work.

DECISION:

The decision of the representative dated October 20, 2009, reference 04, is reversed. Michael Sines is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css