

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM R PARKER**  
Claimant

**APPEAL NO. 13A-UI-02124-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOYNE LANDSCAPING & SNOW  
PLOWING INC**  
Employer

**OC: 10/14/12**  
**Claimant: Respondent (2R)**

Section 96.5-3-a – Refusal of Suitable Work  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from the representative's decision dated February 12, 2013, reference 02, which held that no offer of suitable work was made to the claimant. After due notice was issued, a hearing was held by telephone conference call on March 20, 2013. The claimant participated personally. The employer participated by Jeff Hoyne, president and owner, and Rob Donner, foreman. The record consists of the testimony of Jeff Hoyne; the testimony of Rob Donner; and the testimony of William Parker.

**ISSUES:**

Whether the claimant refused an offer of suitable work; and  
Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer does lawn care work; sod; and snow plowing and removal. The claimant was hired in late March or early April of 2012 to cut grass. No hours are guaranteed. The claimant worked full-time hours during the summer. He was initially laid off in mid October 2012. The claimant established an unemployment claim on October 14, 2012. The claimant did return and work some days in late October or early November 2012.

On November 8, 2012 and November 9, 2012, the employer called the claimant and texted him to come to work. The claimant texted back and said that he could not work because he was painting with his brother. The work offered to the claimant was the type of work he had done for the employer in the past and was at the same rate of \$11.50 per hour.

## REASONING AND CONCLUSIONS OF LAW:

The claimant is not eligible for unemployment insurance benefits because he refused an offer of suitable work on November 9, 2012. Iowa Code Section 96.5-3-A states that an individual is disqualified from receiving unemployment insurance benefits if the claimant has failed to accept suitable work when offered by the employer. The greater weight of the credible evidence is that the employer continued to offer work to the claimant after his first lay off in mid October 2012. The employer made a specific offer of work on November 9, 2012, that was rejected by the claimant. Although the employer testified that the claimant said he was painting with his brother, the claimant testified that he did not want to work for the employer on Saturdays and wanted more notice. The most reasonable inference from the evidence is that the claimant simply did not want to work for the employer unless it was on his terms. This is not good cause to refuse work, particularly since the work was the type done by the claimant and at the same rate. Benefits are therefore denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the claims section for determination.

**DECISION:**

The unemployment insurance decision dated February 12, 2013, reference 02, is reversed. The claimant refused an offer of suitable work on November 9, 2012. The claimant is not eligible to receive unemployment insurance benefits effective November 9, 2012. The overpayment issue is remanded to the claims section for determination.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/pjs