

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK J HARDMAN
Claimant

APPEAL NO. 07A-UI-01436-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A J ROOFING
Employer

**OC: 12/31/06 R: 01
Claimant: Appellant (4/R)**

Section 96.4-3 – Ability to and Availability for Work
Section 96.5-3-a – Refusal of Offer of Suitable Work

STATEMENT OF THE CASE:

Kirk J. Hardman (claimant) appealed a representative's February 2, 2007 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits as of January 10, 2007, because he refused the employer's offer of work on January 10, 2007. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2007. The claimant participated in the hearing. The employer was not available for the hearing. A message was left for the employer to contact the Appeals Section immediately.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Was the claimant able to and available for work as of January 10, 2007?

Should the claimant be disqualified from receiving benefits as of January 10, 2007?

FINDINGS OF FACT:

The claimant started working for the employer in April 2006. The employer did not have work for the claimant to do on December 29, 2006. As of December 29, 2006, the employer considered the claimant on a layoff. The claimant established a claim for unemployment insurance benefits during the week of December 31, 2006.

On January 9, 2007, the employer contacted the claimant about working three days, January 9, 10 and 11. The claimant agreed to work these three days and reported to work on January 9,

2007. There was not enough for the claimant to do on January 9 and the employer sent him home early this day.

The claimant's girlfriend fell and broke her wrist the morning of January 10, 2007. The claimant notified the employer he was unable to work on January 10, 2007, because of his girlfriend's medical situation. On January 11, 2007, the employer called the claimant to find out if he would be at the jobsite that day. The claimant indicated he was not available to work on January 11, 2007, because he was taking care of his girlfriend after she broke her wrist.

Other than working January 9 through 11, the claimant knows of no other work the employer had for employees to do. Since January 11, 2007, the employer has not contacted the claimant about anymore work. The claimant filed a claim for the week ending January 13, 2007.

The employer properly responded to the hearing notice and provided his cell phone number as the number to contact him for the hearing. The employer forgot about the February 26, 10:00 a.m. hearing. At 10:00 a.m., the employer had his cell phone turned off while he was in a federal building. By the time the employer contacted the Appeals Section, the hearing had been closed and the claimant had been excused. The employer made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

It is understandable that the employer forgot about the scheduled hearing. While the employer had personal reasons for not being available for the scheduled hearing, the employer did not establish good cause to reopen the hearing. Therefore, the employer's request is denied.

Before a claimant can be disqualified for failing to accept work, he must be able to and available for work. If a claimant is not able to or available for work, he will not be subject to the disqualification imposed under Iowa Code § 96.3-5-a, but he may be ineligible under Iowa Code § 96.4-3 to receive benefits for the week(s) he is not able to or available for work. 871 IAC 24.24(4).

The evidence establishes the claimant was not available to work two of the three days the employer had work available for him to do. Under the facts of this case, the claimant is not eligible to receive unemployment insurance benefits for the week ending January 13, 2006. The claimant is not disqualified from receiving benefits for failing to do suitable work this week. Therefore, as of January 14, 2007, the claimant is again qualified to receive benefits, provided he meets all other eligibility requirements.

An issue of whether the claimant has been overpaid any benefits for the week ending January 13, 2007, is remanded to the Claims Section to review.

DECISION:

The employer's request to reopen the hearing is denied. The representative's February 2, 2007 decision (reference 03) is modified in the claimant's favor. The claimant was not available to work on January 10 and 11, 2007. As a result, he cannot be disqualified from receiving benefits as of January 7, 2007, for refusing an offer of suitable work. Since the claimant was not available to work the week of January 7, 2007, the claimant is not eligible to receive benefits for this one week. This means as of January 14, 2007, the claimant is again qualified to receive benefits, provided he meets all other eligibility requirements. The issue of whether the claimant has been overpaid benefits for the week ending January 13, 2007, is remanded to the Claims Section to review and issue a written decision.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css