

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

DILBERT P DIMMICK
430 LOCUST PLACE
CLINTON IA 52732

BLUFFS 76 SERVICE CENTER INC
1641 S BLUFF BLVD
CLINTON IA 52732

Appeal Number: 05A-UI-11313-AT
OC: 08-21-05 R: 04
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 of Recall
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Bluffs 76 Service Center, Inc. filed a timely appeal from an unemployment insurance decision dated November 1, 2005, reference 01, which allowed benefits to Dilbert P. Dimmick. After due notice was issued, a telephone hearing was held November 16, 2005, with Mr. Dimmick participating. Owner Jerry Irvine, Office Manager Scott Clancy and Michael Leaf all participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dilbert P. Dimmick was laid off by Bluffs 76 Service Center, Inc. in August 2005. He filed a claim for unemployment insurance benefits effective August 21, 2005. His average weekly wage in the highest quarter of his base period is \$658.96. Seventy-five percent of that amount is \$494.22.

On October 12, 2005, during the seventh week of Mr. Dimmick's benefit year, he was recalled to work by the employer. Mr. Dimmick declined. The recall was to resume his former job at his former rate of pay, \$16.50 per hour for a 40-hour week for a total of \$660.00 gross wage per week. Mr. Dimmick declined the recall because he did not like the work that he was performing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether benefits must be withheld because of Mr. Dimmick's refusal of recall. The administrative law judge concludes that benefits must be withheld.

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 evidence in this record persuades the administrative law judge that the wage offered by the employer on recall exceeded 100 percent of Mr. Dimmick's average weekly wage during the highest quarter of his base period. According to the statute set forth above, the wage would have been considered suitable if it equaled or exceeded 75 percent of the average weekly wage in the high quarter. Furthermore, the evidence establishes that the conditions of employment were to be the same as prior to Mr. Dimmick's layoff. The fact that he did not like his job duties is not sufficient to make the offer unsuitable. Benefits must be withheld.

Mr. Dimmick has received unemployment insurance benefits since his refusal. These benefits must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated November 1, 2005, reference 01, is reversed. Benefits must be withheld until the claimant has worked in and has been wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$2,094.00.

kkf/kjw