

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

ADRIEN A PERRY  
114 – 1<sup>ST</sup>  
DUNBAR VILLAGE  
MARSHALLTOWN IA 50158

TEMP ASSOCIATES – MARSHALLTOWN  
307 WEST MAIN ST  
MARSHALLTOWN IA 50158

Appeal Number: 05A-UI-02216-HT  
OC: 11/28/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3-a – Refusal of Work  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Temp Associates, filed an appeal from a decision dated February 22, 2005, reference 02. The decision allowed benefits to the claimant, Adrien Perry. After due notice was issued a hearing was held by telephone conference call on March 21, 2005. The claimant participated on his own behalf. The employer participated by Manager Deb Upham.

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: Adrien Perry began working for Temp Associates on

April 13, 2004. He accepted assignments in Grinnell, Iowa, and other places, as a production worker/welder. Mr. Perry filed a claim for unemployment benefits with an effective date of November 28, 2004 and his average weekly wage during the base period was \$392.72.

On January 18, 2005, during the eighth week of his unemployment claim, Temp Associates offered the claimant a job as a production worker at Jeld-Wen Windows in Grinnell, Iowa. It was a full-time, first shift, temp-to-hire position starting at \$8.48 per hour, or \$339.20 per week. The claimant turned down the job because it was "not welding" and he considers himself to be a welder and not a production worker. He did not "want to change careers." In addition, his prior jobs had paid \$12.00 per hour.

Adrien Perry has received unemployment benefits since filing a claim with an effective date of November 28, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 job offer made by Temp Associates was during the eighth week of the claimant's unemployment. Under the provisions of the above Code section, the wage would have been more than 75 percent of his average weekly wage during his base period and was suitable under that criteria, regardless of what his wages had been on his prior assignments.

The issue is therefore whether the claimant's refusal of the assignment because it was not a welding job constitutes good cause. The administrative law judge considers that the claimant is currently receiving unemployment benefits and "not welding" and does not consider that "not welding" and being employed is a significant difference. This was an offer of a temporary job which would have given him a weekly wage greater than 75 percent of his base period wage and would not require him to "change careers," only to work outside his usual field for a period of time. His refusal of this job offer was not for reasonable cause and he is disqualified.

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 unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of February 22, 2005, reference 02, is reversed. Adrien Perry is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,768.00.

bgh/s