

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

LUKE L STEIBER  
1902 VILLAGE CREEK DR  
LANSING IA 52151

DAVID WILSON AND AMANDA WILSON  
D/B/A CLANCY'S SUPPER CLUB  
PO BOX 359  
LANSING IA 52151

Appeal Number: 04A-UI-08505-RT  
OC: 05-30-04 R: 04  
Claimant: Respondent (3)

**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 96.4-3 – Required Findings (Able and Available for Work)  
Section 96.5-3 – Failure to Accept Work  
Section 96.3-7 – Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, David Wilson and Amanda Wilson, doing business as Clancy's Supper Club, filed a timely appeal from an unemployment insurance decision dated July 29, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Luke L. Steiber, because an offer of work made by the employer on July 15, 2004, was not suitable. After due notice was issued, a telephone hearing was held on September 16, 2004, with the claimant participating. Terisa Steiber, the claimant's mother, testified for the claimant. Amanda Wilson, Co-owner, participated in the hearing for the employer. The administrative law judge takes

official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This matter was originally set for hearing on August 31, 2004 at 3:00 p.m. and rescheduled at the employer's request.

#### 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: The claimant was employed by the employer as a part-time cook averaging between 20 and 30 hours per week and earning \$6.25 per hour until he was discharged on June 1, 2004. In part, the claimant was discharged because one of the co-owners was mad and frustrated and small things the claimant was doing made him mad and he discharged the claimant. The claimant filed for unemployment insurance benefits and a fact-finding hearing was held but the employer did not contest benefits and did not appeal the fact-finding decision dated June 17, 2004, reference 01, allowing benefits to the claimant. On July 15, 2004, David Wilson, a Co-owner of the employer and the person who discharged the claimant, called the claimant and offered the claimant his old job back under the same circumstances as he had been employed, averaging between 20 and 30 hours per week part-time and making \$6.25 per hour. Extrapolated out over a 40-hour week, this would be a gross weekly wage of \$250.00, which exceeds the claimant's average weekly wage of \$153.83. The claimant would be doing the same job, namely, cooking. The claimant refused this job because he was working other jobs and he did not want to deal with the attitude of the employer, which had resulted in his discharge. The claimant filed for unemployment insurance benefits effective May 30, 2004 and received unemployment insurance benefits in the amount of \$465.00 for 12 weeks from benefit week ending June 5, 2004 to benefit week ending September 4, 2004. The claimant reported earnings in every week except for two weeks, benefit weeks ending August 14 and 21, 2004. During this period of time or a portion of this time, the claimant was on vacation babysitting relatives and was not able and available for work. At all other relevant times, the claimant had placed no restrictions on his availability or ability to work and was actively and earnestly seeking work at least until he obtained full-time employment with Strong Construction on or about July 17, 2004 where he is working during the week approximately 40 hours. The claimant also works on weekends at Harpers Café.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times he was not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for two weeks, benefit weeks ending August 14 and 21, 2004, because he was not able, available, and earnestly and actively seeking work during that period. For all of the other weeks, the claimant is eligible to receive unemployment insurance benefits because he was able, available, and earnestly and actively seeking work.
2. Whether the claimant is disqualified to receive unemployment insurance benefits because he refused to accept suitable work. The claimant is not disqualified to receive unemployment insurance benefits because he did not refuse an offer of suitable work because the offer made was not suitable.
3. Whether the claimant is overpaid unemployment insurance benefits. The claimant is overpaid unemployment insurance benefits in the amount of \$172.00.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he was able, available, and earnestly and actively seeking work for two weeks, benefit weeks ending August 14 and 21, 2004. The claimant has also failed to demonstrate by a preponderance of the evidence that during that period of time he was either temporarily unemployed or partially unemployed under Iowa Code section 96.19(38)(b) and (c) which would excuse him from the provisions requiring that he be able, available, and earnestly and actively seeking work. Iowa Workforce Development records show no earnings reported by the claimant for benefit weeks ending August 14 and 21, 2004 although the claimant had reported earnings in all other weeks he received benefits. The claimant testified that he was on vacation during that time. Later, the claimant said he was babysitting for relatives and was able and available for work. This testimony is not credible. The administrative law judge does not see how one can be able and available for work at the same time that he is responsible for babysitting. The fact that the claimant was not able and available for work is confirmed by the lack of wages reported by the claimant for those two weeks. Accordingly, the administrative law judge concludes that the claimant was required to be able, available, and earnestly and actively seeking work for two weeks, benefit weeks ending August 14 and 21, 2004 but the claimant was not able, available, and earnestly and actively seeking work for those two weeks and is, therefore, ineligible to receive unemployment insurance benefits for those two weeks. For all other weeks, the claimant testified that he had placed no restrictions on his availability or ability for work and was earnestly and actively seeking work at least until he obtained full-time employment from Strong Construction on or about July 17, 2004. This testimony is confirmed also by the claimant's reporting of earnings. Therefore, the administrative law judge concludes that the claimant is not ineligible to receive unemployment insurance benefits for all other weeks. Unemployment insurance benefits are denied to the claimant for benefit weeks ending August 14, 2004 and August 21, 2004 because he was not able, available, and earnestly and actively seeking work. The claimant is entitled to receive unemployment insurance benefits for all other weeks relevant here because he was able, available, and earnestly and actively seeking work.

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 administrative law judge concludes that the employer has the burden to prove that the claimant has refused to accept suitable work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant refused to accept suitable work. The evidence does establish that the employer called the claimant and offered him a position on or about July 15, 2004 but the claimant refused the offer. The offer was for the same work he was doing prior to being discharged on June 1, 2004. He was to work between 20 and 30 hours per week part-time cooking and receive \$6.25 per hour. Extrapolated over 40 hours, this would be a gross weekly wage of \$250.00, which exceeds the claimant's average weekly wage of \$153.83. However, the administrative

law judge concludes that this offer of work was not suitable. The evidence establishes that the claimant had been employed with the employer regularly but was discharged on June 1, 2004. The claimant was discharged by David Wilson, Co-owner of the employer and the husband of the employer's witness, Amanda Wilson. The claimant was discharged because Mr. Wilson was mad and frustrated and discharged the claimant over small things the claimant had done. The administrative law judge would understand why the claimant would not want to re-insert himself into such a work environment facing a potential additional discharge. Further, the evidence indicates that on or about that time the claimant had accepted another position with Strong Construction, which was full-time and did not have the time to devote to this job. Accordingly, the administrative law judge concludes that the offer of work was not suitable and the claimant's refusal was justified, the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible but as noted above, the claimant is not otherwise eligible to receive unemployment insurance benefits for benefit weeks ending August 14, 2004 and August 21, 2004.

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 administrative law judge concludes that among other benefits, the claimant has received unemployment insurance benefits in the amount of \$172.00 for two weeks, benefit weeks ending August 14, 2004 and August 21, 2004. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of July 29, 2004, reference 02, is modified. The claimant, Luke L. Steiber, is not entitled to receive unemployment insurance benefits for two weeks, benefit weeks ending August 14, 2004 and August 21, 2004, because he was not able, available, and earnestly and actively seeking work. For all other relevant times the claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible because he was able, available, and earnestly and actively seeking work. The claimant is not disqualified to receive unemployment insurance benefits because he justifiably refused an offer of work, which was not suitable. The claimant has been overpaid unemployment insurance benefits in the amount of \$172.00.

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