

**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**

**CLINTON J BROOKHART  
701 E PENNINGTON APT #240  
WEST BURLINGTON IA 52655**

**CARL A NELSON & CO INC  
PO BOX 698  
BURLINGTON IA 52601**

**Appeal Number: 05O-UI-05293-DWT  
OC: 02/06/05 R: 04  
Claimant: Respondent (1)**

**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 96.5-3-a – Refusal of Suitable Work  
Section 96.4-3 – Able to and Available for Work  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Carl A. Nelson & Company, Inc. (employer) appealed a representative's March 9, 2005 decision (reference 01) that concluded Clinton J. Brookhart (claimant) was qualified to receive unemployment insurance benefits even though he did not accept an offer of work from the employer on February 3, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2005. The claimant did not participate in the hearing. Based on the evidence presented by the employer, another administrative law judge issued an April 7, 2005 decision that concluded the claimant was not available for work and disqualified him from receiving benefits as of February 6.

The claimant appealed the April 7, 2005 decision to the Employment Appeal Board. Since the claimant did not receive the hearing notice and did not know about the April 5 hearing, the Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2005. The claimant participated in the hearing. Renita Jarrett, the payroll supervisor, and Mike Harris, the superintendent, appeared on the employer's behalf. Based on 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:

Was the claimant able to and available for work as of February 3, 2005?

Did the claimant refuse an offer of suitable work from the employer on February 3, 2005?

Has the claimant been overpaid \$930.00 in unemployment insurance benefits?

#### FINDINGS OF FACT:

The claimant began working for the employer on October 21, 2002. The claimant worked as a construction worker. In mid-January 2005, the employer assigned the claimant and other employees in his crew to work on a painting project in Keokuk. The claimant and his co-workers painted during the day for about two weeks. When other trades people at the job site complained about the paint fumes, the employer decided the painting would be done at night. On February 3, 2005, when the employer asked the claimant to work at night, the claimant declined to do so. The employer then placed the claimant on layoff status.

When the claimant applied for work with the employer, he indicated he was only interested in first-shift work. Prior to February 3, 2005, the employer had only assigned the claimant to work first shift. In the past when the claimant worked second shift or at night for another employer, the claimant fell asleep when he drove home. The claimant lived an hour from the work site.

In late February or about three weeks later, the human resource director talked to the claimant about recalling him back to work. Even though the claimant learned the employer could call him back to work for second shift work again, the employer recalled him to return to first shift on February 28, 2005. The claimant returned to work for the employer on February 28.

The claimant established a claim for unemployment insurance benefits during the week of February 6, 2005. The claimant filed claims for the weeks ending February 12 through 26, 2005. He received his maximum weekly benefit amount of \$310.00 for each of these weeks.

#### REASONING AND CONCLUSIONS OF LAW:

Before a claimant can be disqualified from receiving unemployment insurance benefits because he refused an offer of suitable work without good cause, the offer and refusal of the offer must occur within the claimant's benefit year. Iowa Code § 96.5-3-a, 871 IAC 24.28(8). The facts establish the employer's offer of the second-shift work and the claimant's refusal occurred before the claimant established a claim for unemployment insurance benefits, February 6,

2005. Therefore, the Department has no jurisdiction to address whether the claimant refused an offer of suitable work with or without good cause.

(If the Appeals Section had jurisdiction, the fact the claimant has never worked second shift for the employer and applied to work first shift, would amount to good cause to refuse the offer to work at night.)

Next, the issue of whether the claimant is able and available for work as of February 6, 2005, still needs to be addressed. Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code §96.4-3. Since the facts establish the claimant has always worked first shift for the employer and returned to work when the employer offered him first shift work, the claimant did not unduly limit his availability to work. The evidence indicates the claimant was able to and available for work during the weeks ending February 12 through 26, 2005. Therefore, he is eligible to receive benefits for these weeks.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. In this case the claimant is legally entitled to receive benefits for the weeks ending February 12 through 26, 2005. The claimant was legally entitled to receive benefits for these weeks and has not been overpaid \$930.00 in benefits he received for these weeks.

#### DECISION:

The representative's March 9, 2005 decision (reference 01) is affirmed. Since the employer's offer of second-shift work and the claimant's refusal of this offer work occurred before the claimant established a benefit year, the claimant cannot be disqualified from receiving benefits for this reason. The claimant established he was able to and available for work during the weeks ending February 12 through 26, 2005. The claimant is legally entitled to receive benefits for these weeks. Therefore, he has not been overpaid \$930.00 in benefits he received for these weeks.

dlw/pjs