

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

HERBERT L HAWTHORNE
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MUSCATINE IA 52761

R J PERSONNEL INC
TEMP ASSOCIATES
PO BOX 1061
MUSCATINE IA 52761-0018

Appeal Number: 04A-UI-09057-CT
OC: 03/28/04 R: 04
Claimant: Appellant (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 Work
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Herbert Hawthorne filed an appeal from a representative's decision dated August 11, 2004, reference 02, which denied benefits on a finding that he had refused suitable work with Temp Associates. After due notice was issued, a hearing was held by telephone on September 15, 2004. Mr. Hawthorne participated personally. The employer participated by Angie Brauns, Account Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Hawthorne initially began accepting assignments through Temp Associates in January of 2000. His last assignment was with Pretium Packaging, where he worked from November 5, 2003 until January 25, 2004. In June of 2004, Temp Associates had work available for Mr. Hawthorne with Terry & Sons. An attempt was made to reach him by telephone but the employer was unable to do so. Therefore, letters were sent to him on June 2 regarding the job offer. One letter was sent by regular mail and another by certified mail, both of which were returned. Mr. Hawthorne was receiving his mail at a homeless shelter at the time and did not know that his mail was being returned by the shelter.

Mr. Hawthorne claimed job insurance benefits for the week ending May 8, 2004. He did not claim benefits again until the week ending July 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hawthorne should be disqualified for refusing an offer of work. It is clear from the evidence that the job offers were not communicated to Mr. Hawthorne. The employer was unable to reach him by telephone to advise of the job offer. Both letters sent to him regarding the job offer were returned to the employer. Mr. Hawthorne cannot be disqualified for refusing work when he never received the offer. He could not have predicted that the homeless shelter would return his mail.

The employer's inability to make contact with Mr. Hawthorne raises the issue of his availability for work. However, availability disqualifications are only appropriate if an individual is claiming benefits during a time he is not available. Because Mr. Hawthorne was not claiming benefits from May 9 through July 10, the issue of his availability for work during this period is moot.

After considering all of the evidence, the administrative law judge concludes that there is no basis for disqualification. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated August 11, 2004, reference 02, is hereby reversed. Mr. Hawthorne did not refuse an offer of suitable work as he never received the offer. Benefits are allowed on his additional claim filed effective July 11, 2004, provided he satisfies all other conditions of eligibility.

cfc/pjs