

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

DAVID L HEIM  
19256 – 25<sup>TH</sup> AVE  
CASCADE IA 52033

ORKIN EXTERMINATING COMPANY INC  
C/o GATES MCDONALD & CO  
PO BOX 182366  
COLUMBUS OH 43218

ELLEN JACKSON  
ALL AMERICAN HOMES  
1151 – 15<sup>TH</sup> AVE SE  
DYERSVILLE IA 52040-0219

Appeal Number: 04A-UI-03026-BT  
OC: 01/25/04 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

David Heim (claimant) appealed an unemployment insurance decision dated March 10, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he refused to accept suitable work with Orkin Exterminating Co., Inc. (employer). Due notice was issued scheduling the matter for a telephone hearing to be held April 8, 2004. Because a decision fully favorable to the parties could be made based on information contained within the record, a hearing was deemed unnecessary.

#### FINDINGS OF FACT:

The administrative law judge, having reviewed and considered the evidence in the record, finds that: The appeal was based upon the claimant's refusal of work with Orkin Exterminating Company, Inc. The claimant is still gainfully employed with All American Homes and was only on a temporary lay-off.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

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.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

When filing his claim for unemployment insurance benefits, the claimant mistakenly indicated he had been permanently laid off work with All American Homes. In fact, he was only on a temporary layoff and is still gainfully employed. Since the claimant did not unreasonably refuse an offer of work, he is qualified for benefits, provided he is otherwise eligible. Since the employer is not a base period employer, its account is not subject to any charges.

DECISION:

The unemployment insurance decision dated March 10, 2004, reference 01, is reversed. The claimant did not unreasonably refuse a suitable offer of work and is qualified for benefits provided he is otherwise eligible. Orkin Exterminating Company, Inc., is not a base period employer and its account is not subject to charge.

sdb/kjf