

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JASON K YOUNG**  
Claimant

**APPEAL NO. 08A-UI-00113-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WITTROCK LAWN SERVICE**  
Employer

**OC: 12/02/07 R: 01  
Claimant: Appellant (5)**

Section 96.4-3 - Able to and Available for Work  
Section 96.5-3-a - Failure to Accept Suitable Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 28, 2007, reference 01, that concluded he failed to accept suitable work. A telephone hearing was held on January 17, 2008. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. He provided a telephone number but was not available at that number at the time of the hearing. Joseph Wittrock participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant able to and available for work?

Did the claimant fail to accept an offer of suitable work without good cause?

**FINDINGS OF FACT:**

The claimant worked for the employer as a lawn application sprayer from August 2004, to November 15, 2007, when he was laid off due to lack of work because the lawn application season ended. During the winter months, the claimant worked on-call/as-needed performing snow removal work when there was work available. After November 15, 2007, the claimant had done snow removal work for the employer.

The claimant and his brother established a competing lawn care business in December 2007. The owner of the employer, Joseph Wittrock, called the claimant on December 11, after Wittrock had received calls from customers that the claimant had contacted them about signing up with his competing lawn service. The claimant admitted that he had started his own business and would not be returning to work for the employer or accepting snow removal jobs in the future. The employer had plenty of snow removal work available after December 11, 2007, if the claimant had been available.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause as set forth in Iowa Code § 96.5-3-a. The claimant did not fail to accept any specific offer of work in this case. Instead, he let the employer know that he would not be returning to work in the spring when work started up again. Such a statement by an unemployed person does not disqualify him from receiving benefits. There has to be a specific offer of work and a definite refusal before a disqualification can be imposed.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. I conclude the claimant's unwillingness to accept snow removal assignments from the employer constitutes an undue restriction on his availability to work, which makes him ineligible for benefits. This disqualification continues until he establishes he is fully available for work, including snow removal work for the employer.

**DECISION:**

The unemployment insurance decision dated December 28, 2007, reference 01, is modified with no change in the outcome of the case. The claimant is disqualified from receiving unemployment insurance benefits until he reapplies for benefits and establishes his full availability to work

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css