

**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**

**KRIS H NIEMANN
BIG ROCK LN 1167
HARPER'S FERRY IA 52146**

**K J'S ROOFING & CONSTRUCTION LC
ATTN KEN JOHANNINGMEIER
28563 – 205TH ST
GARNAVILLO IA 52049**

**Appeal Number: 05A-UI-05010-DT
OC: 01/30/05 R: 04
Claimant: Respondent (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 – Work Refusal
Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

K J's Roofing & Construction, L.C. (employer) appealed a representative's May 2, 2005 decision (reference 02) that concluded Kris H. Niemann (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2005. Ken Johanningmeier appeared on the employer's behalf. The claimant did not receive the hearing notice, and did not participate in the hearing. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant refuse an offer of suitable work without good cause? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The hearing notice was mailed to the claimant's last known address of record on May 12, 2005. However, the claimant began serving a prison sentence on approximately May 9, 2005. The hearing notice was returned to the Appeals Section with a note written on the envelope stating, "Kris has moved out. Don't know if he'll ever return. Has gone to look for work. Was a big problem. Thanks, Randy Niemann." Mr. Johanningmeier identified Randy Niemann as Kris Niemann's wife.

After prior periods of employment with the employer going back approximately ten years, the claimant most recently started working for the employer on April 1, 2004. He worked full time as a laborer in the employer's roofing and construction business. His last day of work was July 20, 2004. He voluntarily quit effective that date after a dispute with a coworker. A separate representative's decision issued on March 3, 2005 (reference 01) concluded that the claimant had quit due to a detrimental work condition; the employer did not file a timely appeal to that decision.

On or about April 8, 2005, Mr. Johanningmeier approached the claimant with regard to returning to work immediately the following Monday, April 11, 2005. He informed the claimant that the person with whom the claimant had had the disagreement was no longer working with the employer. The claimant agreed that he would otherwise return to working for the employer, but that since he was going to be going to prison shortly, he did not think it worth his time to return to work in the meantime.

The claimant established a claim for unemployment insurance benefits effective January 30, 2005. His weekly benefit amount was calculated to be \$142.00. The claimant has received unemployment insurance benefits after the refusal of employment in the amount of \$568.00.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work without good cause.

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(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The situation with the coworker that caused the claimant to quit no longer existed. The employer's offer of employment was for suitable work. Even though the claimant would only be available for work for about a month, the claimant did not have good cause to decline the work. He could have worked the four weeks before he began his incarceration rather than continuing to draw unemployment insurance benefits. Benefits are denied effective April 10, 2005.

The next issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

By declining work in anticipation of being imprisoned, the claimant imposed restrictions that left him with no reasonable expectation of securing employment. 871 IAC 24.22(2)(m). Being imprisoned also renders the claimant not able and available for work. 871 IAC 24.23(12). The claimant was not able and available for work effective April 10, 2005.

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.

Because the claimant refused suitable work without good cause and was not able and available for work, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 2, 2005 decision (reference 02) is reversed. The claimant refused a suitable offer of work and was not able and available for work. Due to the refusal, as of April 10, 2005 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$568.00.

ld/pjs