

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN N HINTZ

Claimant

APPEAL NO. 08A-UI-01039-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

**OC: 11/25/07 R: 03
Claimant: Respondent (2)**

Section 96.5(3)a – Refusal of Work

Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, DES Staffing, filed an appeal from a decision dated January 31, 2008, reference 06. The decision allowed benefits to the claimant, Dustin Hintz. After due notice was issued, a hearing was held by telephone conference call on February 13, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Amy McGregor and Division Manager Molly Jacobson.

ISSUE:

The issue is whether the claimant refused an offer suitable work.

FINDINGS OF FACT:

Dustin Hintz filed a claim for unemployment benefits with an effective date of November 25, 2007. His average weekly wage during his base period was \$414.92. He was offered assignments from DES Staffing on December 12, and two on December 26, 2007. These jobs offered wages of \$290.00, \$360.00 and \$330.00 per week, all of which are less than 100 percent of his average weekly wage.

However, DES also offered the claimant a long-term assignment on December 10, 2007, for \$11.00 per hour for full-time work, which is \$440.00 per week. Division Manager Molly Jacobsen offered him the job by personal contact over the phone and told him to call her by noon the next day if he wanted the job. He did not call back.

Dustin Hintz has received unemployment benefits since filing a claim with an effective date of November 25, 2007.

REASONING AND CONCLUSIONS OF LAW:

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.

The offers of work made to the claimant on December 12, and 26, 2007, were not suitable, as they did not pay at least 100 percent of his average weekly wage. However, the job offer made on December 10, 2007, did meet this minimum criteria. He refused the offer of work. Because he did not participate in the hearing, Mr. Hintz did not establish why he refused so that the administrative law judge could evaluate whether his reasons constitute good cause. Therefore, it must be concluded he refused an offer of available, suitable work without good cause and is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 31, 2008, reference 06, is reversed. Dustin Hintz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,638.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw