

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J HALE

Claimant

APPEAL NO. 08A-UI-03449-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AHRENS CONCRETE PAVING LLC

Employer

**OC: 02/24/08 R: 02
Claimant: Appellant (1)**

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The claimant, Joshua Hale, filed an appeal from a decision dated March 31, 2008, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 16, 2008. The claimant participated on his own behalf. The employer, Ahrens Concrete Paving, participated by Business Manager Troy Zaruba.

ISSUE:

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

FINDINGS OF FACT:

Joshua Hale was an employee of Ahrens Concrete Paving and had been notified by Business Manager Troy Zaruba on February 22, 2008, he was being demoted from supervisor to general laborer. The claimant accepted the demotion and agreed to continue working for the company in that capacity.

General Superintendent Tim Vosberg then called the claimant on February 25, 2008, to confirm he was willing to continue working as a general laborer and to offer him work. He was told there would be a few days of work that next week but the claimant declined. The next week work picked up and the crews have been working full time since then, but the claimant never contacted Mr. Vosberg or anyone else at Ahrens Concrete Paving to ask if work was available, because he assumed they would be contacting him.

Joshua Hale has received unemployment benefits since filing a claim with an effective date of February 24, 2008.

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 claimant declined the offer of work because it was only a few days for that week. However, just because a job is temporary does not make it unsuitable. Norland V. IDJS, 412 NW. 2d 904 (Iowa 1987). The claimant refused an offer of available, suitable work from his regular employer. Under the provisions of the above Code section, he 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 March 31, 2008, reference 03, is affirmed. Joshua Hale is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw