

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 GANSEN  
13 LINCOLN DR  
PALO IA 52324

GREG'S LAWN SERVICE INC  
1480 PROGRESS DR  
HIAWATHA IA 52233-2206

Appeal Number: 05A-UI-08238-S2T  
OC: 08/15/04 R: 03  
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, 4<sup>th</sup> 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  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Greg's Lawn Service (employer) appealed a representative's August 2, 2005 decision (reference 05) that concluded David Gansen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2005. The claimant participated personally. The employer participated by Greg Scharf, President, and Todd West, Shop Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was laid off. On March 18, 2005, the employer told the claimant that all workers would return to work on March 21, 2005. The claimant disregarded the employer's conversation because the employer did not specifically say the claimant could return to work on March 21, 2005.

The claimant did not appear for work on March 21, 2005, and the employer attempted to reach the claimant by telephone. On April 4, 2005, the employer stopped by the claimant's house. The claimant told the employer he did not want to do the type of work he had been doing for the employer.

The testimony of the employer and claimant was conflicting. The administrative law judge finds the employer's testimony to be more credible, because the claimant's testimony was inconsistent. In addition, the employer had two witnesses to the conversation on March 18, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant refused an offer of suitable work. For the following reasons the administrative law judge concludes he did.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The employer offered the same work to the claimant as he had been performing. The work offered to the claimant was suitable work. The claimant is disqualified from receiving unemployment insurance benefits.

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 benefits in the amount of \$4,602.62 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 2, 2005 decision (reference 05) is reversed. The claimant is not qualified to receive benefits. The claimant is overpaid benefits in the amount of \$4,602.62.

bas/kjw