

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

JERRIE L SIMS
407½ S “A” ST
OSKALOOSA IA 52577

ROBBINS CONSTRUCTION LTD
3261 - 235TH ST
ROSE HILL IA 52586

Appeal Number: 05A-UI-03866-SWT
OC: 12/19/04 R: 03
Claimant: Appellant (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 - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 5, 2005, reference 01, that concluded he had refused a recall to work. A telephone hearing was held on May 3, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing, with a witness, Jerrie Luvern Sims. Wade Robbins participated in the hearing on behalf of the employer with a witness, John Sims.

FINDINGS OF FACT:

The claimant worked as a laborer for the employer from June 1, 2003, to December 17, 2004, when he was informed that he was laid off for the season. When work started up again in January 2005, the foreman tried reaching the claimant by phone to recall him back to work but was unsuccessful. On one occasion, the foreman had an employee stop by the claimant's

house to pick him up for work, but the claimant was not there. The employer has not personally contacted the claimant and offered him work or sent him a registered letter recalling him to work.

Since filing for unemployment insurance benefits, the claimant has been able to work and available for work. Since the claimant was considered to be temporarily laid off, he was not required to look for work, but the claimant has searched for work on his own because the employer has not recalled him to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable 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 unemployment insurance rules provide that for a claimant to be disqualified for failing to accept suitable work, there has to be an offer of work made by a personal contact or an offer made in a registered letter sent to the claimant. 871 IAC 24.24(1). In this case, no personal offer of work was made to the claimant and no letter was sent to the claimant by registered mail recalling him back to work. As a result, the claimant is not subject to disqualification for refusing work.

The next issue in this case is whether the claimant is able to work and available for work as defined by the unemployment insurance law in Iowa Code Section 96.4-3. The claimant has been able to work and available for work since filing for unemployment insurance benefits. The fact that the employer was not able to communicate with the claimant does not establish that he was not able to and available for work. There is no evidence that the claimant deliberately tried to avoid contact with the employer.

DECISION:

The unemployment insurance decision dated April 5, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs