

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

JEREMY P LUDVICEK
1726 NW DERBY AVE
SWISHER IA 52338

OX YOKE INN INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-03251-S2T
OC: 01/01/06 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Ox Yoke Inn (employer) appealed a representative's March 6, 2006 decision (reference 04) that concluded Jeremy Ludvick (claimant) 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 April 10, 2006. The claimant participated personally. The employer was represented by Sandy Fitch, Hearings Representative, and participated by Bill Leichsenring, President/Owner.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 1, 2006. The claimant's average weekly wage during his highest quarter of wages was \$421.85.

On approximately February 14, 2006, the claimant was offered a job by the employer as a waiter. The job started at 40-hours per week of training and the rate of pay was \$5.15 per hour. The claimant was qualified to perform the work. The claimant declined the work because it involved a substantial change in his pay.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant failed to accept an offer of suitable work. For the following reasons, the administrative law judge concludes he did not.

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 work was offered within seven weeks of the claimant's unemployment and was required to provide the claimant wages 75 percent of those paid to the claimant during the highest quarter of his base period. The evidence fails to establish that the claimant would have received at least 75 percent of his average weekly wages during his high quarter of earnings. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated March 6, 2006 (reference 04) is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

bas/kkf