

**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 J FINERAN  
PO BOX 151  
EXIRA IA 50076**

**C&M CONTRACTORS  
OF MISSOURI LLC  
CM CONTRACTORS  
PO BOX 445  
LANCASTER MO 63548**

**Appeal Number: 06A-UI-00585-HT  
OC: 06/26/05 R: 01  
Claimant: Appellant (1-R)**

**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 Work

STATEMENT OF THE CASE:

The claimant, Jeremy Fineran, filed an appeal from a decision dated January 11, 2006, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 1, 2006. The claimant provided a telephone number of (712) 268-7211. That number was dialed twice by the conference operator, and the only response was a voice mail. The claimant did not participate. The employer, C&M Contractors, participated by Secretary Beth Haley and Co-Owner James Nagel.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeremy Fineran was employed by C&M Contracting. Employees are to appear for work at the job site every Monday unless notified in advance by the employer that no work was scheduled.

Mr. Fineran filed an additional claim for benefits with an effective date of November 17, 2005. He reported no wages for that week, although he worked 17.5 hours. The employer was told by relatives of the claimant that he was in jail for the week ending December 10, 2005, and he did not appear for work during the week ending December 17, 2005, although the crew did work that week.

The record was closed at 2:14 p.m. At 2:21 p.m. the claimant called and requested to participate. He had received the notice of the hearing and called in his phone number but was not present at 2:00 p.m. when the call was placed. He had confused the appeal hearing time and date with a fact-finding interview scheduled for January 25, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 did not report for work on Monday, December 12, 2005, according to the policies of the employer. He did not accept the work available that week, although the rest of the crew did work.

The next issue is whether the record should be reopened. The judge concludes it should not. Under the provisions of 871 IAC 26.14(7)c states it is not good cause to reopen the record if a party failed to read and follow the instructions on the notice of the hearing. Mr. Fineran did receive the notice and provided a phone number, but he was not present at that number when the call was made, because he had not read the notice carefully to see that the hearing was scheduled February 1, 2006, at 2:00 p.m. His failure to be present when the call was made does not constitute good cause to reopen the record and the request is denied.

#### DECISION:

The representative's decision of January 11, 2006, reference 02, is affirmed. Jeremy Fineran is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

The issue of whether the claimant was able and available for work during the two-week period from December 4 through 17, 2005, is remanded to the Claims Section for determination.

This matter is also remanded to the Investigation and Recovery Section to determine whether Mr. Fineran failed to correctly report wages for the week ending December 3, 2005.

bgh/kjw