

**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**

**DANIEL R HEGWOOD  
1709 PROSPECT  
KNOXVILLE IA 50138**

**VOLT MANAGEMENT CORP  
c/o TALX UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864**

**Appeal Number: 04A-UI-00312-DT  
OC: 01/12/03 R: 02  
Claimant: Respondent (4)**

**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 96.4-3 - Able and Available  
Section 96.5-3-a – Work Refusal  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Volt Management Corporation (employer) appealed a representative's December 30, 2003 decision (reference 03) that concluded Daniel R. Hegwood (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 3, 2004. The claimant received the hearing notice and responded by calling the Appeals Section on January 15, 2004. He indicated that he would be available at the scheduled time for the hearing at telephone number 641/842-6495. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Cindy Saucedo appeared on the employer's behalf. Based on the

evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work and not refusing a suitable offer of work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began a long-term assignment at a business client with the employer's predecessor on October 22, 2001. His last day on the assignment was November 22, 2003. The assignment ended because under the contract between the employer and the business client, a person could not be continually employed on the assignment for more than two years without an intervening 60-day hiatus. There was some discussion regarding returning the claimant to the assignment after the 60-day period. However, as early as October 2003 and through November 22, 2003 the claimant informed the employer that he was entering truck-driving school effective on or about December 1, 2003 and so would not be available. No other offers of assignments to other clients were made to the claimant during the 60-day period, nor did the employer make a specific offer to return to the original assignment after the expiration of the 60-day period.

The claimant established a claim for unemployment insurance benefits effective January 1, 2003. He filed an additional claim effective November 23, 2003. His weekly benefit amount was calculated to be \$262.00. After December 1, 2003, the claimant has received unemployment insurance benefits for six weeks.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work.

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.

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.

In this case, there was no bona fide offer of work and no definite refusal of work. Benefits would be allowed, if the claimant is otherwise eligible.

The next issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Because he was occupied with attending the truck driving school, the claimant was not able and available for work effective December 1, 2003. Benefits are denied until he has demonstrated that he has again become able and available for work, if he is then otherwise eligible.

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.

Because the claimant was not able and available for work, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's December 30, 2003 decision (reference 03) is modified in favor of the employer. The claimant was not able to work and available for work effective December 1, 2003, and benefits are denied until he demonstrates that the conditions have changed, if he is then otherwise eligible. The claimant is overpaid benefits in the amount of \$1,572.00.

ld/kjf