

**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**

**KEVIN K ROOB
534 E LINN ST
COGGON IA 52218**

**SCHMIDT CONSTRUCTION CO INC
WINFIELD IA 52659**

**Appeal Number: 06A-UI-01538-DT
OC: 12/04/05 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 – Work Refusal

STATEMENT OF THE CASE:

Kevin K. Roob (claimant) appealed a representative's January 27, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Schmidt Construction Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2006. The claimant participated in the hearing. Jeanne Binkele appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer on May 11, 1992. He worked full time as a carpenter in the employer's bridge and heavy highway construction business. His last day of work was December 2, 2005. He was laid off as of that date.

On December 11, 2005, the claimant's foreman informed the claimant that the crew would be going back to work on or about January 3, 2006, but that they would be working in Eddyville, over a 100 miles from the claimant's home. The claimant's work, at least in 2005, had been virtually exclusively in the Iowa City and Cedar Rapids area, not very far from his home. The claimant informed the foreman that he had personal issues at home that necessitated that he be home every night, and that it was too expensive and unworkable for him to drive back and forth from home to Eddyville every day, particularly when there would be some days that the crew ended up only working a short time. When he became employed by the employer, he knew that there could be travel outside the Iowa City/Cedar Rapids area, but it had never been this far away before. He therefore indicated to his foreman that he needed to work closer to home. He meant that he was declining to work with the crew in Eddyville and would either wait until the employer had other work closer to home or he found work with another employer closer to home. The foreman understood that the claimant was at least declining the work the employer had available at the time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of recall to 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 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.

Each case must be determined on its own merits as to whether the work was suitable and whether the claimant had good cause for refusal. 871 IAC 24.24(3). Rule 871 IAC 24.24(15) specifies that in determining what constitutes suitable work, the department shall consider, among other relevant factors, the distance from the available work. Without a prior specific agreement between the employer and employee, the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification. 871 IAC 24.24(10). The claimant did not refuse a suitable offer of recall to work without good cause.

DECISION:

The representative's January 27, 2006 decision (reference 01) is reversed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjw