

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

**RANDALL J STURGES**  
**2215 S LAKEPORT**  
**SIOUX CITY IA 51106**

**L & L BUILDERS CO**  
**PO BOX 1497**  
**SIOUX CITY IA 51102**

**Appeal Number: 05A-UI-02716-JTT**  
**OC: 01/09/05 R: 01**  
**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able & Available  
Section 96.5(3) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Randall Sturges filed a timely appeal from the March 10, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 31, 2005. Mr. Sturges participated in the hearing. L & L Builders Co. participated through Steve Leonard, Vice President in charge of Operations.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randall Sturges was employed by L & L Builders Co. as a full-time laborer from February 14, 2000 until January 12, 2005, when the employer temporarily laid him off, due to a lack of work.

On February 11, Steve Leonard, Vice President for Operations, attempted to contact Mr. Sturges at the telephone number he had previously provided to the employer in order to recall Mr. Sturges to work on February 14. The contact number was for Mr. Sturges' cell phone. Mr. Leonard made several attempts to reach Mr. Sturges on his cell phone, but could not reach him. Mr. Leonard concluded that Mr. Sturges had quit the employment. When Mr. Leonard was unsuccessful in reaching Mr. Sturges, he faxed a letter to Iowa Workforce Development asking for assistance in locating Mr. Sturges. The employer did not attempt to contact Mr. Sturges by mail, even though Mr. Sturges maintained the same address at all relevant times.

On March 10, 2005, Mr. Leonard participated in a meeting with the employer's supervisors and, during the meeting, asked the supervisors whether they knew of anyone interested in doing concrete work. One of the supervisors mentioned Mr. Sturges. On March 11, Mr. Leonard made contact with Mr. Sturges at his father's home and offered him work. On March 14, Mr. Sturges returned to work for L & L Builders.

Mr. Sturges had been arrested in Dakota County, Nebraska on January 21 and briefly incarcerated. His cell phone was seized at the time of the arrest and continues in the possession of law enforcement. Mr. Sturges did not acquire a new cell phone after the arrest. Mr. Sturges did not advise L & L Builders or Iowa Workforce Development that he could no longer be reached at the telephone number he had previously provided. Mr. Sturges assumed Mr. Leonard knew he could reach him at his father's home. The employer had previously contacted Mr. Sturges at that number.

Mr. Sturges established a claim for benefits that was effective January 9, 2005. At that time, Mr. Sturges reported his address as 2215 South Lakeport, Sioux City, IA 51106. Iowa Workforce Development used that address on March 10, when it mailed Mr. Sturges the notice of disqualification for benefits. The Agency again used that address to provide Mr. Sturges notice of the appeal hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The undisputed evidence is that Mr. Sturges was on a temporary lay off From January 12 through February 13, 2005, the day before the employer would have recalled him to work. See Iowa Code section 96.19(38)(c). During this period, Mr. Sturges was not required to be available for other work. See Iowa Code section 96.4(1) and (3). Thus, the issues in this case pertain to Mr. Sturges' status as of February 14, the date of the recall.

The first issue is whether the evidence in the record establishes that Mr. Sturges was unavailable to be recalled to work at L & L Builders. A closely related issue is whether the evidence in the record establishes that Mr. Sturges refused a recall to suitable work.

A claimant is deemed unavailable for work if the claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work. See 871 IAC 24.23(41).

Before a claimant will be deemed to have refused a recall to suitable work, the evidence must establish, among other things, that an offer of employment was made by "personal contact." In the context of a recall to work, contact by means of a registered letter is included in the definition of "personal contact." See 871 IAC 24.24(1)(a)

Courts are to construe the eligibility provisions of the unemployment compensation law liberally and to interpret the unemployment compensation law's disqualification provisions strictly to further the purpose of the law. See Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85 (Iowa 1997).

Although the employer could not make personal contact with Mr. Sturges by means of the cell phone number, the employer could have notified Mr. Sturges of the recall to work by means of a registered letter. The employer did not attempt to contact Mr. Sturges by this means. The employer could have contacted Mr. Sturges by means of his father's telephone number and had in fact previously utilized this means of contacting Mr. Sturges. The employer could have contacted Mr. Sturges by asking its supervisors whether they knew how to reach Mr. Sturges. The evidence fails to establish that Mr. Sturges was unavailable for the recall to work, as Mr. Sturges was unaware that he the choice of returning to work. Likewise, the evidence fails to establish that Mr. Sturges refused the recall to suitable work, as the employer never made personal contact with Mr. Sturges, though it could have done so by means of a registered letter. Mr. Sturges' prompt return to the employment once he was notified it was available to him supports a conclusion that Mr. Sturges would have returned to the employment on February 14, had he been aware of the recall.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Sturges continued to be "temporarily unemployed" until he returned to work on March 14, 2005. Having so concluded, the administrative law judge need not address the issue of whether Mr. Sturges was unavailable for work because the Agency could not contact him by telephone for referral to other possible employment, as that requirement was waived. See Iowa Code section 96.4(1) and (3).

#### DECISION:

The Agency representative's decision dated March 10, 2005, reference 01, is reversed. The claimant was at all relevant times "temporarily unemployed." The claimant was at all relevant times available for recall to the employer that had temporarily laid him off. The claimant did not refuse a recall to suitable work. The claimant was not required to be available for referrals to other work. No disqualification will enter based on availability. The claimant is eligible for benefits, provided he is otherwise eligible.

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