

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

DAVID V PEAVLER  
503 – 7<sup>TH</sup> AVE  
PRESCOTT IA 50859

ADVANCE SERVICES INC  
C/o TALX UCM SERVICES INC  
PO BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-05891-RT  
OC: 04/03/05 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, 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 96.6-2&3 – Initial Determination (Previous Adjudication)  
Section 96.5-3 – Failure to Accept Work  
Section 96.4-3 – Required Findings (Able and Available for Work)  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

An appeal by the claimant, David V. Peavler, of a decision by an authorized representative of Iowa Workforce Development dated April 21, 2005, reference 02, appeal number 05A-UI-04679-RT, was treated also as an appeal of a decision by an authorized representative of Iowa Workforce Development dated May 11, 2005, reference 01. A hearing was held for appeal numbers 05A-UI 04679-RT and 05A-UI-05358-RT, on May 20, 2005, with the claimant participating. Mindy Shackelford, Human Resources Coordinator, participated in the hearing for

the employer, Advance Services, Inc. Employer's Exhibits One and Two were admitted into evidence at that hearing and the administrative law judge took official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Those two appeals were consolidated for the purposes of that hearing with the consent of the parties, and the parties permitted the administrative law judge to take evidence on, and decide, the issues in those appeals, including the representative's decision dated May 5, 2005, reference 01, which is the subject of this appeal.

#### FINDINGS OF FACT:

Having examined all of the evidence in the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on May 11, 2005, reference 01, denying unemployment insurance benefits to the claimant because he refused to accept suitable work with Advance Services, Inc., on April 5, 2005. This issue was previously adjudicated in appeal numbers 05A-UI-04679-RT and 05A-UI-05358-RT. The evidence established in those appeals that the claimant, two times, refused to accept offers of work from the employer, Advance Services, Inc., once on April 5, 2005, and again on April 14, 2005. No other offers of work were made. In appeal number 05A-UI-04679-RT, the administrative law judge concluded that neither offer of work was suitable because neither offer, or position, paid a sufficient gross weekly wage. The administrative law judge also concluded that the claimant was able to work and the claimant did not have to be available for work and earnestly and actively seeking work because he was temporarily unemployed under Iowa Code section 96.19(38)(c). In appeal number 05A-UI-05358-RT, the administrative law judge concluded that the claimant was not overpaid unemployment insurance benefits in the amount of \$315.00 for two weeks between April 3, 2005 and April 16, 2005. The issue posed in this appeal has already been adjudicated and it is not now necessary to re-adjudicate that issue or to even have a hearing in this matter.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the question of the claimant's eligibility for unemployment insurance benefits, arising out of an offer of work from the employer, Advance Services, Inc., on April 5, 2005, is disqualifying and whether the claimant is ineligible to receive unemployment insurance benefits because he is, and was, at relevant times, not able, available, and earnestly and actively seeking work, and whether the claimant is overpaid unemployment insurance benefits, have been previously adjudicated and decided. Those issues have been previously adjudicated and decided and it is not now necessary to re-adjudicate, or re-decide, those issues, and the claimant is not disqualified to receive unemployment insurance benefits and he is not overpaid unemployment insurance benefits.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the

claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code section 96.6-3 provides:

3. Appeals. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

The administrative law judge concludes that the issues set out in this appeal, whether the claimant is disqualified to receive unemployment insurance benefits because he refused to accept an offer of suitable work from Advance Services, Inc., on April 5, 2005, and whether the claimant is ineligible to receive unemployment insurance benefits because he is and was, at relevant times, not able, available, and earnestly and actively seeking work, and whether the claimant is overpaid unemployment insurance benefits in the amount of \$315.00 for two weeks between April 3, 2005 and April 16, 2005, have been previously adjudicated. Those issues were adjudicated in appeal numbers 05A-UI-04679-RT and 05A-UI-05358-RT. The decisions in those appeals are, by this reference, incorporated herein as if they were fully and completely set forth. Accordingly, the administrative law judge concludes that the issues in this appeal

concerning the representative's decision dated May 11, 2005, reference 01, have been previously adjudicated. The administrative law judge concluded in those appeals that the claimant, David V. Peavler, is not disqualified to receive unemployment insurance benefits because the offers of work made by Advance Services, Inc., on April 5, 2005, and April 14, 2005, were not suitable and, therefore, his refusal to accept those offers was not a refusal to accept suitable work. The administrative law judge further concluded in those appeals that the claimant was able to work and was not required to be available and earnestly and actively seeking work because he was temporarily unemployed under Iowa Code section 96.19(38)(c). The administrative law judge further concluded in those two appeals that the claimant was not overpaid unemployment insurance benefits in the amount of \$315.00 for two weeks between April 3, 2005, and April 16, 2005. The administrative law judge finally concluded that the claimant was entitled to receive unemployment insurance benefits, provided he was otherwise eligible.

DECISION:

The representative's decision of May 11, 2005, reference 01, is reversed. The claimant, David V. Peavler, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he did not refuse to accept suitable work, and he was able to work, and is excused from provisions that required him to be available for work and earnestly and actively seeking work. The claimant is not overpaid unemployment insurance benefits in the amount of \$315.00 for two weeks between April 3, 2005, and April 16, 2005. These issues were previously adjudicated in appeal numbers 05A-UI-04679-RT and 05A-UI-05358-RT.

kjw/tjc