

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

WESLEY E LANGFORD
15 LACONA ST
DES MOINES IA 50315

JOHN'S TREE SERVICE INC
2824 MAURY ST
DES MOINES IA 50317

Appeal Number: 05A-UI-04993-C
OC: 01/09/05 R: 02
Claimant: Respondent (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 – Refusal of Work
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

John's Tree Service, Inc. filed an appeal from a representative's decision dated May 3, 2005, reference 02, which held that no work had been offered to Wesley Langford on April 4, 2005. After due notice was issued, a hearing was held on May 24, 2005 in Des Moines, Iowa. The employer participated by Dennis Moody, Owner. Mr. Langford did not appear for the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Langford began working for John's Tree Service, Inc. in

2003 as a full-time tree trimmer. On or about January 9, 2005, he was laid off due to lack of work. He was told that work would resume on April 4, 2005. Mr. Langford did not return on April 4 and the employer has had no contact with him about a return to work since that date.

Mr. Langford has received a total of \$1,614.00 in job insurance benefits for the period from April 3 through May 21, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Langford was offered work by John's Tree Service, Inc. He knew when he was laid off in January that he was to return to work on April 4. He did not participate in the hearing to offer an explanation for his failure to return as scheduled. Therefore, the administrative law judge concludes that he failed to accept recall to suitable work. Accordingly, benefits are denied pursuant to Iowa Code section 96.5(3)a.

Alternatively, Mr. Langford's failure to return to work following a layoff can be considered a voluntary quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for Mr. Langford's failure to return to work on April 4. Therefore, his quit was not for good cause attributable to John's Tree Service, Inc.

For the reasons stated herein, the administrative law judge concludes that Mr. Langford is disqualified from receiving job insurance benefits effective with the Sunday of the week in which he failed to return to work, April 3, 2005. He has received benefits from April 3 through May 21, 2005. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 3, 2005, reference 02, is hereby reversed. Mr. Langford refused recall to suitable work on April 4, 2005. Benefits are withheld effective April 3, 2005 and until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Langford has been overpaid \$1,614.00 in job insurance benefits.

cfc/pjs