

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

JEREMY M KROEGER  
921 N PINE ST  
DAVENPORT IA 52804

DIERCKS LTD  
PO OX 2633  
DAVENPORT IA 52807-2633

Appeal Number: 06A-UI-00563-HT  
OC: 12/04/05 R: 04  
Claimant: Respondent (4-R)

**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 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Diercks, filed an appeal from a decision dated January 10, 2006, reference 04. The decision allowed benefits to the claimant, Jeremy Kroeger. After due notice was issued, a hearing was held by telephone conference call on February 1, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Office Manager Lisa Diercks.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jeremy Kroeger was employed by Diercks Ltd.

Beginning March 22, 2005, he was a full-time concrete laborer and in the winter was to do snow removal.

He had filed his claim for unemployment benefits effective December 4, 2005, when work slowed down due to the weather. He was to keep in touch with the office to check for work either with concrete or snow removal. The last day he worked was December 23, 2005, and he last filed for unemployment benefits the week ending December 24, 2005, and reported wages in excess of his weekly benefit amount.

The employer has been unable to reach him at the phone number he provided, and a letter sent to his address of record was returned indicating he no longer lived there.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

The claimant obviously accepted work from the employer for the weeks during which he filed his claim for benefits. He reported wages for each of the three weeks, the final week he earned wages in excess of his unemployment benefit amount. He did not refuse the offer of work.

The employer had work available for him after the week ending December 24, 2005, but has not been able to reach him. The issue is whether he is able and available for work and the matter should be remanded for determination.

DECISION:

The representative's decision of January 10, 2006, reference 04, is modified in favor of the appellant. Jeremy Kroeger did not refuse an offer of work and is qualified for benefits. The account of Diercks, Ltd., shall not be charged with benefits.

The issue of whether the claimant is able and available for work is remanded to the Claim Section for determination.

bgh/kjw