

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

ALAN JEWELL
525 – 3RD ST NE
MASON CITY IA 50401

GAGNON INC
2286 CAPP RD
ST PAUL MN 55114

Appeal Number: 05A-UI-05928-BT
OC: 05/01/05 R: 02
Claimant: Appellant (1)

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 Suitable Work

STATEMENT OF THE CASE:

Alan Jewell (claimant) appealed an unemployment insurance decision dated May 24, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he refused to accept suitable work with Gagnon, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2005. The claimant participated in the hearing. The employer participated through Peter Gagnon, Corporate Safety.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time technician from August 23, 2004 through May 6, 2005. He last worked for the employer on November 15, 2004. He was offered re-employment on February 23, 2005 and he effectively refused the offer of work. The claimant was required to complete a drug screening before starting work, which was a new policy the claimant had signed off on through the union. The employer has the drug testing done with a registered, licensed agency. The claimant received the collection cup and went into the bathroom where a woman was present. He asked if he could have some privacy and was denied that. He never specified what type of privacy he wanted but simply left claiming, "they denied me my rights."

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

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.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The claimant was offered work on February 23, 2005 and effectively refused that offer of work by walking out without providing a urine sample for a drug screening. The claimant did not have to say the words, "I refuse to accept that job", since his actions spoke for him. His behavior during the hearing was somewhat odd. During his testimony, the claimant said at least 34 separate times that he "asked for privacy" and/or he was "denied it." He would not specify what type of privacy he wanted and could not even answer the question of whether or not there was a stall in the bathroom. He simply kept reciting in a rote manner that he asked for privacy and was denied it. The Administrative Law Judge concludes the job offer from his former employer was reasonably suitable and comparable with the purview of the claimant's occupation. Since the claimant did refuse a suitable offer of work, he is disqualified and benefits are denied.

DECISION:

The unemployment insurance decision dated May 24, 2005, reference 01, is affirmed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/pjs