

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CHAD A MILLER
Claimant

APPEAL NO. 07A-UI-10188-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEN PEARCE CONSTRUCTION
Employer

**OC: 09/30/07 R: 02
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available
Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

Ken Pearce Construction (Pearce) filed an appeal from a representative's decision dated November 1, 2007, reference 01, which held that no work had been offered to Chad Miller on October 4, 2007. After due notice was issued, a hearing was held by telephone on November 20, 2007. Mr. Miller participated personally. The employer participated by Ken Pearce, Owner.

ISSUE:

At issue in this matter is whether Mr. Miller refused an offer of suitable work. There is an additional issue as to whether Mr. Miller is available for work within the meaning of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Miller was employed by Pearce from the spring until the fall of 2006. He worked part time as a laborer and was paid \$12.00 per hour. Because of other activities, Mr. Miller only wanted to work part time.

On or about October 4, 2007, Mr. Pearce went to Mr. Miller's wife's job with the intent of having her have her husband contact him regarding work. As it turned out, Mr. Miller was present at his wife's workplace. He was offered as many days of work as he wanted each week. He told the employer that he had a court date coming up and might have to spend time in jail, depending on the outcome of the case. He indicated he would contact Mr. Pearce when the issues were resolved. Mr. Miller's court date was approximately one week later but he was not required to serve any jail time.

Mr. Miller did not contact the employer about work after he resolved his court issue. He contacted the employer that had laid him off on or about September 28, 2007 to find out when he might be recalled. He was not given a specific date on which he might return to his job with Tunnel Mill Polymer, Inc. He did not contact Pearce to see what work, if any, might be available until he could return to his regular employer.

Mr. Miller filed a claim for job insurance benefits effective September 30, 2007. He has received a total of \$136.00 in benefits each week since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Miller was offered work on October 4, 2007. Since he did not get back to Pearce regarding the offer, the administrative law judge concludes that the work was declined. An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. However, no disqualification is imposed unless the individual is available for work within the meaning of Iowa Code section 96.4(3) at the time of the refusal. See 871 IAC 24.24(4).

It appears that Mr. Miller declined the work because he is waiting to be recalled to Tunnel Mill Polymer, Inc. It has been seven weeks since he declined work with Pearce and he still has not been recalled to work. Where an individual will not consider other suitable work because he is waiting to be recalled by a former employer, he is not considered available for work within the meaning of the law. See 871 IAC 24.23(20). An individual who is on a temporary layoff is not required to be available for work. However, a temporary layoff shall not exceed four weeks. Iowa Code section 96.19(38)c. Therefore, Mr. Miller would not be considered temporarily laid off after the week ending October 27, 2007. He received \$136.00 for each of the two weeks ending November 10, 2007.

For the reasons stated herein, the administrative law judge concludes that Mr. Miller is not entitled to job insurance benefits effective October 28, 2007, as he was not available for work. He has received benefits since October 28, 2007. 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 November 1, 2007, reference 01, is hereby reversed. Mr. Miller is not entitled to job insurance benefits because he does not satisfy the availability requirements of the law effective October 28, 2007. Benefits are withheld until such time as he provides proof to Workforce Development that he is available for work, provided he satisfies all other conditions of eligibility. Mr. Miller has been overpaid \$272.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw