

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

TY H KENT
3020 W 2ND ST
DAVENPORT IA 52804

A OETZEL CONSTRUCTION INC
6318 W RIVER DR
DAVENPORT IA 52802-2249

Appeal Number: 04A-UI-05592-AT
OC: 04/04/04 R: 04
Claimant: Respondent (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 96.5-3a – Refusal of Work

STATEMENT OF THE CASE:

A. Oetzel Construction, Inc., filed a timely appeal from an unemployment insurance decision dated May 12, 2004, reference 03, which allowed benefits to Ty H. Kent upon a finding that no offer of work was made by the company on January 8, 2004. After due notice was issued, a telephone hearing was held on June 1, 2004 with Mr. Kent participating. Office Manager Dona Schroeder participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: On or about January 8, 2004, A. Oetzel

Construction, Inc. attempted to contact Ty H. Kent in order to recall him to work. The company was unable to contact him.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Mr. Kent should be disqualified for unemployment insurance benefits for refusing recall to work. He should not.

Iowa Code Section 96.5-2-b provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

The employer has the burden of proof. See Iowa Code Section 96.6-2. Before there can be a refusal of work, there first must be a bona fide offer. According to 871 IAC 24.24(1) a bona fide offer of work generally requires personal contact. For purposes of recall, however, a registered letter is sufficient to establish personal contact.

The evidence in this record does not establish that anyone from A. Oetzel Construction, Inc. actually spoke with Mr. Kent or that the company recalled him by registered letter. Since there was no bona fide offer of recall, there can be no disqualifying refusal. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 12, 2004, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjf/b