

**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**

**JOHNNIE M BUCKLIN  
4333 PARKRIDGE AVE LOT 109  
PLEASANT HILL IA 50327**

**PLUM ENTERPRISES  
4536 W EUCLID AVE  
DES MOINES IA 50310**

**Appeal Number: 04A-UI-05944-DW  
OC: 02/22/04 R: 02  
Claimant: Respondent (1/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 are 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 Offer of Work

STATEMENT OF THE CASE:

Plum Enterprises (employer) appealed a representative's May 18, 2004 decision (reference 02) that concluded Johnnie M. Bucklin (claimant) was qualified to receive unemployment insurance benefits even though he declined an offer of work on February 23, 2004. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 13, 2004 in Des Moines, Iowa. The claimant participated in the hearing. Jan Graham and Clint Graham, the owners, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant qualified to receive benefits after he refused the employer's February 23, 2004 offer of work?

#### FINDINGS OF FACT:

The employer and claimant considered the claimant self-employed and not an employee. (The employer has already appealed the issue of whether the claimant is an employee or self-employed. The outcome of the employer's appeal on this issue was pending as of July 12, 2004.)

The claimant started doing work for the employer on November 24, 2003. When the claimant wanted to earn money, he showed up at a certain time each day so the employer could tell him where a job was located.

On February 23, 2004, the claimant and others finished an inside cleaning job. When this job was finished, the claimant and others were taken to another job site to pick up wood outside. The ground at this job site was very muddy. When the claimant got out of the vehicle, he was ankle-deep in mud. Although the claimant would have received an hourly rate of \$10.00 an hour at this job site and would have worked at least two hours, the claimant declined to work at this job. The claimant declined the job because he did not want to work in the mud. The employer had no problem with the claimant declining any work because the employer did not consider the claimant an employee.

The claimant thought the employer would take him to another job, but the employer did not have another job for him to do that day. The claimant did not return after February 23 because he understood the employer would not assign him to any more jobs.

The claimant established a claim for unemployment insurance benefits during the week of February 22, 2004. The employer is not one of the claimant's base period employers. The claimant's average weekly wage based on his highest quarter of base period wages is \$16.21 per hour.

#### REASONING AND CONCLUSIONS OF LAW:

The issue of whether the claimant is an employee or self-employed cannot be addressed in this decision. If the claimant were self-employed, the fact he declined to work in the mud on February 23 would not affect his eligibility to receive unemployment insurance benefits. For purposes of this decision and as of July 12, 2004, there is a decision, that the employer appealed, holding the claimant was an employee. Therefore, the claimant will be treated as an employee in this decision.

The claimant was working at the employer's jobs on February 23, 2004. He finished one job and the employer asked him to do another job at a different location. The second job is the one the claimant declined to do. The February 23 situation should be looked at as a separation from employment occurring on February 23 (if the claimant is an employee). As a result, the issue of whether the claimant's separation was for disqualifying or nondisqualifying reasons must be remanded to the Claims Section to investigate and issue a written decision to the parties (if the claimant is an employee).

In the alternative, assume Iowa Code §96.5-3-a is applicable to the facts of this case. The law provides a claimant shall be disqualified from receiving unemployment insurance benefits if he declines an offer of suitable work without good cause. One of the facts that must be considered when deciding if a job is suitable is the hourly wage the job pays in comparison to the wage the claimant is required to accept when he has established a claim for unemployment insurance benefits. Iowa Code §96.5-3-a. In this case, the law indicates the job the claimant

declined was not suitable because it did not pay him at least \$16.21 per hour. If the claimant had earned \$16.21 per hour, his reason for declining the job would disqualify him from receiving unemployment insurance benefits. Since the job the claimant declined paid him \$10.00 an hour, for unemployment insurance purposes this job was not a suitable job for the claimant. As a result, the claimant remains qualified to receive unemployment insurance benefits as of February 22, 2004.

DECISION:

The representative's May 18, 2004 decision (reference 02) is affirmed. If the claimant is an employee, he refused the employer's job of picking up wood at \$10.00 an hour for reasons that do not disqualify him from receiving unemployment insurance benefits. Therefore, as of February 22, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. Plum Enterprises is not in the claimant's base period. Even if the claimant is considered an employee, the employer's account will not be charged during the claimant's current benefit year.

This matter is remanded to the Claims Section to investigate and issue a decision as to whether the reasons for the claimant's separation are for disqualifying or nondisqualifying reasons (if the claimant is an employee).

dlw/tjc