

**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**

**JESSY J THIELEN
1012 CHATBURN AVE
HARLAN IA 51537-2005**

**ADVANCE SERVICES INC
c/o TALX UCM SERVICES INC
PO BOX 66864
ST LOUIS MO 63166-6864**

**Appeal Number: 06A-UI-04607-CT
OC: 04/02/06 R: 01
Claimant: Respondent (2)**

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 Work
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Advance Services, Inc. filed an appeal from a representative's decision dated April 20, 2006, reference 02, which held that no disqualification would be imposed regarding Jessy Thielen's refusal of work. After due notice was issued, a hearing was held by telephone on May 15, 2006. Mr. Thielen participated personally. The employer participated by Brandie McFarland, Office Manager.

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. Thielen completed an assignment with Advance

Services, Inc., a temporary placement firm, on March 31, 2006. On April 6, he was contacted by telephone and offered a “temp-to-hire” position with Cardinal Glass in Greenfield. The assignment was for 40 or more hours per week and paid \$11.15 per hour. Mr. Thielen indicated he would only accept the assignment if there was also an opening for his girlfriend. He was living in Harlan at the time and did not want to drive to and from Greenfield alone. He estimated the drive would have been at least one hour. Because there was no position available at that time for his girlfriend, Mr. Thielen declined the assignment.

On April 12, Mr. Thielen was offered a “temp-to-hire” position with Shelby County Cookers in Harlan. The assignment was for 40 hours each week and paid \$9.25 per hour. He indicated he was not interested in the position. Mr. Thielen did not want to work in a production job because he has suffered carpal tunnel syndrome in his right hand. The work with Cardinal Glass was re-offered to Mr. Thielen on April 17 and the work with Shelby County Cookers was re-offered on April 28. He declined both opportunities on both occasions.

Mr. Thielen filed a claim for job insurance benefits effective April 2, 2006. The average weekly wage paid to him during that quarter of his base period in which his wages were highest was \$352.30. He has not worked since March 31, 2006. He is seeking work primarily in the welding and construction fields. Mr. Thielen received \$199.00 in job insurance benefits for each of the five weeks ending May 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed as a result of Mr. Thielen’s refusal of work with Advance Services, Inc. An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. The work offered on April 6 was located over one hour from Mr. Thielen’s home. He lived in Harlan but the work with Cardinal Glass was in Greenfield. The administrative law judge concludes that the work was not suitable because it was not in the area where he resided. See 871 IAC 24.247.

The work offered on April 12 was with Shelby County Cookers in Harlan where Mr. Thielen lived. The work was offered during the second week of his unemployment. Therefore, the job had to pay 100 percent of the average weekly wage paid to him during that quarter of his base period in which his wages were highest. In other words, the job had to pay at least \$352.30 per week. The job at Shelby County Cookers paid \$370.00 per week (\$9.25/hour x 40 hours). Mr. Thielen contended that he could not accept the assignment because it was in production and he has had problems with carpal tunnel syndrome in his right hand. However, he does not know what specific tasks he would have been required to perform at Shelby County Cookers. Moreover, he has been seeking work in the construction field. If he is able to work a construction job, he should be physically able to perform a production job.

After considering all of the evidence, the administrative law judge concludes that the work offered to Mr. Thielen on April 12, 2006, was suitable work within the meaning of the law and that he has not established good cause for the refusal. Accordingly, benefits are denied as of the date on which the assignment was to start, April 15, 2006. Since this was a Saturday, benefits are denied as of Sunday, April 16, 2006. Mr. Thielen has received job insurance benefits for each of the five weeks ending May 20, 2006. 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 April 20, 2006, reference 02, is hereby reversed. Mr. Thielen refused suitable work with Advance Services, Inc. for no good cause. Benefits are withheld effective April 16, 2006, and until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Thielen has been overpaid \$995.00 in job insurance benefits for the period April 16 through May 20, 2006.

cfc/kkf