

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

JOSE MIGUEL REYES
517 –23RD AVE
FULTON IL 61252

NATIONAL BY-PRODUCTS LLC
PO BOX 615
DES MOINES IA 50303-0615

Appeal Number: 04A-UI-00940-DT
OC: 06/29/03 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 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

National By-Products, L.L.C. (employer) appealed a representative's January 26, 2004 decision (reference 05) that concluded Jose Miguel Reyes (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2004. The claimant participated in the hearing. Lezah Geerts appeared on the employer's behalf. Rosemary Paramo-Ricoy served as interpreter. During the hearing, Employer's Exhibit One and Agency Exhibit One were entered into evidence. 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: Did the claimant refuse an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer in a second period of employment on October 31, 2001. He worked full time as a skinner. His hourly rate of pay was \$9.00. His last day of work was July 1, 2003. A prior decision, which has become final, concluded that at that time he voluntarily quit work for a good cause, a substantial change in his terms of employment. (03A-UI-08708-DT, issued August 21, 2003.)

The claimant established a claim for unemployment insurance benefits effective June 29, 2003. His weekly benefit amount was calculated to be \$309.00. His high quarter of reported wages was the fourth quarter of 2002; his average weekly wage during that quarter was \$500.20.

After his separation from employment with the employer, the claimant obtained employment with another employer that lasted for approximately one month and ended on September 26, 2003. He filed an additional claim effective September 28, 2003. On or about October 29, 2003, he made application for reemployment with the employer. The employer offered the claimant a skinner position at the hourly rate of \$7.50. The weekly rate of pay in the position would have been approximately \$450.00. The claimant declined the position because the hourly rate of pay was \$1.50 less than what he had previously been paid for the same work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

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(15) provides in pertinent part:

In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

The statute dictates that the average weekly wage which must be used for determining whether an offer is suitable is that calculated from the high quarter; there is no exception for wages earned in employment which have a higher proportion of wages paid in one quarter or season over another. At the time the offer of employment was made on October 29, 2003, the claimant was within his first five weeks after his most recent additional claim for benefits. In order to be "suitable" at that time as to the claimant, the offer would have had to satisfy the requirement that the employer would provide 100 percent of the \$500.20 average weekly wage. The employer's offer did not satisfy that requirement. Therefore, the offer was not "suitable" as to the claimant. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's January 26, 2004 decision (reference 05) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjf