

**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**

**RICHARD F BUSHMAN  
2460 MINERAL ST  
DUBUQUE IA 52001**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 05A-UI-05060-DT  
OC: 11/28/04 R: 04  
Claimant: Appellant (4)**

**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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

871 IAC 24.2-1-e – Failure to Report  
871 IAC 24.23-25 – Out of Town Majority of Week  
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Richard F. Bushman (claimant) appealed a representative's May 9, 2005 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits because he had not responded to an Agency notice to respond to an issue relating to his eligibility. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on June 1, 2005. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

The claimant established an initial claim for unemployment insurance benefits effective November 28, 2004. He filed a weekly claim for the week ending April 23, 2005 in which he indicated that he had refused an offer of work. On April 26, 2005 the Agency sent the claimant a "notice to report" for a telephone interview to be held on May 5, 2005 to discuss the work refusal issue. The administrative law judge takes notice of the fact that mail sent from Des Moines to Dubuque, is notoriously slow, so it is conceivable that the notice would not have arrived at the claimant's residence until May 2, 2005. The Agency representative attempted to contact the claimant twice on May 5, 2005 and twice more on May 6, 2005 but got no answer. The reason the claimant did not respond was because he had gone out of town on May 2, 2005 and did not return until late on May 6, 2005, and so had both not received the notice before leaving and had not been home when the representative attempted to call.

The claimant had been a roofing supervisor for many years. During the week ending April 23, 2005 he had a job offer for work doing siding at the hourly rate of \$12.00. He declined the position both because his training was not easily transferable to siding work, and because the pay was below his 65 percent of his hourly average weekly pay, \$13.00 per hour.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant failed to report as required to be eligible for unemployment insurance benefits.

871 IAC 24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

The claimant had a good reason for failing to report on May 5, 2005. He is therefore not disqualified for his failure to report as directed. However, the reason for his failing to report is that he was out of town for the major portion of the week, and is therefore ineligible to receive unemployment insurance benefits for that one week ending May 7, 2005. 871 IAC 24.23(25).

The final issue in this case is whether the claimant refused a suitable offer of work without good cause.

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.

The position offered would have required skill or training that the claimant did not already possess, and was therefore not suitable for him. 871 IAC 24.24(2). Further, the job offer did not meet the minimum wage requirement for the claimant. 871 IAC 24.24(15)(i). Benefits are allowed, other than for the week ending May 7, 2005, if the claimant is otherwise eligible.

DECISION:

The representative's May 9, 2005 decision (reference 03) is modified in favor of the claimant. The claimant had good reason for not reporting on May 5, 2005 as directed, but was out of town for the major portion of that week, and so is ineligible for that week only. The claimant had good cause to refuse the offer of work the week ending April 23, 2005. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs