

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

ROBERT E KURSETH  
1208 OAKLAND RD NE  
CEDAR RAPIDS IA 52402

BYPSUM SUPPLY COMPANY  
c/o PERSONNEL PLANNERS INC  
913 W VAN BUREN N-3A  
CHICAGO IL 60607

Appeal Number: 04A-UI-04656-S2T  
OC: 03/7/04 R: 03  
Claimant: Appellant (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, 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)

Section 96.5-3-a – Failure to Accept Suitable Work

STATEMENT OF THE CASE:

Robert Kurseth (claimant) appealed a representative's April 15, 2004 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he had refused suitable work with Gypsum Supply Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2004. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

#### FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 7, 2004. The claimant's average weekly wage during his highest quarter of wages was \$431.18.

On March 31, 2004, the claimant was offered a job by the employer with no guarantee of more than 30 hours per week. The rate of pay was \$10.00 per hour. The claimant declined the work because it involved a change in his pay.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant failed to accept an offer of suitable work. For the following reasons the administrative law judge concludes he did not.

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 work was offered within four weeks of the claimant's unemployment and was required to provide the claimant wages 100 percent of those paid to the claimant during the highest quarter of his base period. The evidence fails to establish that the claimant would have received at least 100 percent of his average weekly wages during his high quarter of earnings. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated April 15, 2004 (reference 04) is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

bas/s