BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

ROBERT W FREEMAN	:	
	:	**HEARING NUMBER:** 10B-UI-04610
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
JG SERVICE/JEFF GOULD	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-3A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Robert W. Freeman, worked for JG Service/Jeff Gould beginning May of 2000 as a full-time office furniture servicemen/installer at a specific business client's worksite. (Tr. 3-4, 15) Mr. Freeman earned $18/hour until December 31, 2008 when the business client eliminated the claimant's position. (Tr. 4, 15) The employer offered the claimant work (Farm Bureau) in early February that lasted less than a month in which the claimant earned only $15/hour. (Tr. 4, 5, 16) The employer ran out of work on February 19, 2009, as Farm Bureau had ended their relationship with the employer. (Tr. 10, 16) Mr. Freeman subsequently applied for and was awarded unemployment benefits, effective February 15, 2009 (Tr. unnumbered p. 1), without contest from the employer. (Tr. 11, 12, 13)

Freeman's claim opened a benefit year beginning February 15, 2009 through February 13, 2010 from which he could draw wage credits from his base period that began October 2008 through September 2009. When his benefit year ended, he qualified for extended benefits, which he began receiving August 22, 2009. (Tr. 13-14)

Sometime during the late spring of 2009, the employer offered the claimant work earning $15/hour for a couple days of work in Indianola for which Mr. Freeman declined because he planned on taking vacation in mid-June, and he preferred to earn $18/hour. (Tr. 4, 5-6, 8, 9, 10, 11, 16-18, 19) The employer had no problem with his decision as he understood. (Tr. 4, 17-18) Mr. Freeman wanted his full-time job back (Tr. 18), but the employer was unable to provide him with full-time work at that point. (Tr. 18, 22)

The employer intended to offer Mr. Freeman work for a few months on June 19th, 2009 at $15/hour with Mr. Freeman's former employer (Storey Kenworthy), but the employer assumed that the claimant would refuse based on the claimant's previous quit of that job. (Tr. 20-21, 23)

Beginning August 2009, Mr. Freeman received emergency benefits until the end of his benefit year (February 15, 2010) that were not chargeable to the employer. (Tr. unnumbered p. 1, 13-14) The employer protested his second claim for benefits that became effective February 14, 2010. (Tr. unnumbered p.1, 12, 21)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.1(113)"a" provides:

> *Layoffs*. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Code Section 96.5(3)(a) (2009) provides:

> 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, the 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 higher:

(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 thirteen 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.

Although the employer argues that he made offers of work (one for 3-4 weeks and one for nearly six months), the claimant provides contradictory testimony that he was only offered a job that would last a couple of days. (Tr. 16-18, 19) The employer does not dispute that he told the claimant his denial was okay for the first offer; in fact, the employer admits that he told Mr. Freeman that he understood his decision. (Tr. 4) Had the employer made his offer more in line with Freeman's original rate of pay ($18/hour) and it was for the time frame alleged (3-4 weeks), then the offer would have been arguably suitable. However, the fact that the employer never protested the claimant's first claim gives rise to a reasonable inference that the employer more likely than not made an ***unsuitable*** offer of work that the claimant was justified in refusing.

As for the second offer that allegedly occurred nearly six months prior to Mr. Freeman's filing of his second claim, the claimant had no recollection of it. Additionally, the employer laced his testimony that the offer was made "…[knowing] what was probably going to happen when [he] told him[he] was going to work for [Storey Kenworthy]." (Tr. 20) It is not wholly unreasonable for us to surmise that this offer may have never come to fruition, particularly in light of the absence of any documentation to support the employer's allegation. (Tr. 13)

Looking at this record as a whole, we find the claimant is more credible that no suitable work was offered, particularly considering the employer's delay in protesting the claimant's claim, coupled with both parties' testimony that Freeman was originally laid off. For this reason, we find the claimant was not obligated to accept work that was not suitable.

DECISION:

The administrative law judge's decision dated May 17, 2010 is **REVERSED**. The claimant is qualified to receive unemployment insurance benefits. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/kk