

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

JOHN W CERNEY
802 N 2ND ST
FT DODGE IA 50501-2402

INTERSTATE BRANDS CORPORATION
C/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0280

Appeal Number: 04A-UI-01198-S2T
OC: 12/07/03 R: 01
Claimant: Respondent (4) R

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 to Accept Suitable Work

STATEMENT OF THE CASE:

Interstate Brands Corporation (employer) appealed a representative's January 26, 2004 decision (reference 03) that concluded John Cerney (claimant) was eligible to receive unemployment insurance benefits and an offer of suitable work had not been made. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2004. The claimant participated personally. The employer participated by Kelly Green, Human Resources Assistant.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant never worked for the employer. No offer of work was extended to the claimant by the employer. The claimant refused work from a different employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant refused an offer of suitable.

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 employer did not offer the claimant work. The claimant is not disqualified from receiving unemployment insurance benefits because no offer of work was extended from the employer to the claimant. This employer shall not be charged. The matter is remanded to determine what employer offered the claimant work.

DECISION:

The representative's January 26, 2004 decision (reference 03) is modified in favor of the appellant. The claimant is not disqualified from receiving unemployment insurance benefits. The matter is remanded to determine the correct employer.

bas/b