

**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**

**BRIAN L SWAIN
PO BOX 353
417 OHIO ST
OXFORD IA 52322**

**YORDI EXCAVATING INC
707 – 27TH AVE SW STE B
CEDAR RAPIDS IA 52404**

**Appeal Number: 04A-UI-02356-LT
OC 01-25-04 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, 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 96.4-3 - Able and Available
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 26, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 23, 2004. Claimant did participate. Employer did participate through Sheryl Dolley.

FINDINGS OF FACT:

Employer made an offer of work to claimant on January 27, 2004. That offer included the following terms: Dennis Yordi said there would be no work for the next couple of weeks because of the weather. Claimant had given his notice to take other employment with Wendler Engineering on February 2. His last day was to be Friday, January 30. The last day of work

was January 26. Dennis Yordi told employees on January 27 that there would be no work for a couple of weeks because of the weather and they should file for unemployment benefits. No offer of work in the shop was made to claimant but Yordi told him he might as well leave. Dennis Yordi did not participate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work the week ending January 31, 2004.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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.

Claimant was the only participant to the conversation with Dennis Yordi to testify. His recollection that work in the shop was not offered or discussed is credible. He had worked Monday, January 26 so he is also credible that he would have worked had he known some work was available. Thus, claimant was available for work the week ending January 31, 2004 and no offer of work through the end of that week was made so there was no work refusal. Accordingly, benefits are allowed for the one-week ending January 31, 2004.

DECISION:

The February 26, 2004, reference 02, decision is reversed. The claimant was able to work and available for work effective January 27 through January 30, 2004. Benefits are allowed.

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