

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANTHONY J HANSON
Claimant

APPEAL NO: 12A-UI-00539-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEESE INC – LP2
Employer

OC: 02/10/08
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Refusal to Return to Work
Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 13, 2012 determination (reference 05) that disqualified him from receiving benefits as of December 6, 2011, because he refused a recall to suitable work. The claimant participated in the hearing. Alan Neese, the owner, and Katherine Neese appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

As of December 6, 2011, was the claimant able to and available for work?

Did the claimant refuse an offer to return to work?

FINDINGS OF FACT:

The claimant started working for the employer the summer of 2011. The employer called the claimant when there was work to do. The last day the claimant worked for the employer was November 30, 2011.

The employer had work for the claimant to do the week of December 5. Alan Neese called the claimant's cell phone number the claimant's grandmother's phone in an attempt to tell the claimant the employer had work for him to do. The claimant did not receive any calls from the employer and his grandmother did not tell him he had anyone calling him. If the claimant had known the employer wanted him to work, he would have worked. When the claimant did not return the employer's calls, the employer did not try to contact the claimant after December 6. The employer did not personally talk to the claimant on December 5 or 6. The employer did not send the claimant a letter asking him to return to work the week of December 5.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa code § 96.4(3). The evidence indicates the claimant was able to and available for work the

week of December 5, 2011. A claimant is not qualified to receive unemployment insurance benefits if he declines without good cause an offer to return to work. Iowa Code § 96.5(3)a. When deciding if a claimant has failed to accept suitable work, a bona fide offer of work must be established by personally contacting the claimant or by sending a registered letter when a claimant is being recalled to work. 871 IAC 24.24(1).

The employer did not personally talk to the claimant or send him a registered letter asking him to return to work. The employer's unsuccessful attempts to call and talk to the claimant do not meet the personal contact requirement to establish a bona fide offer. Since the claimant did not receive a bona fide offer to return to work, he did not have the ability to accept or decline the employment. Under the facts of this case, the employer did not establish a bona fide offer for the claimant to return to work. The claimant is eligible to receive benefits as of December 4, 2011.

DECISION:

The representative's January 13, 2012 determination (reference 05) is reversed. The employer did not make the claimant a bona fide offer to return to work. Therefore, as of December 4, 2011, the claimant is qualified to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css