

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID F CEJKA

Claimant

APPEAL NO. 10A-EUCU-00559-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIMM BROTHERS PLASTICS CORP

Employer

OC: 05/17/09

Claimant: Respondent (1)

Section 96.5-3-a – Refusal to Accept of Work

STATEMENT OF THE CASE:

The employer appealed a representative's June 22, 2010 decision (reference 01) that held him the claimant qualified to receive benefits in early August 2009, even though he declined the employer's early August 2009 offer to return to work. A telephone hearing was held on August 19, 2010, before Administrative Law Judge Coleman. The claimant participated in the hearing. Linda Wilson, the controller and human resource manager, appeared on the employer's behalf.

This decision has been assigned to another administrative law judge to write because Administrative Law Judge Coleman unexpectedly went on an extended leave of absence. After carefully listening to the evidence the parties presented on August 19, and applying the applicable law, this administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse an offer to return to work for reasons that do not qualify him to receive benefits?

FINDINGS OF FACT:

The claimant worked for the employer since 2003. Prior to the employer laying him off from work on May 23, 2009, the claimant worked as a full-time forklift operator. He worked the night shift and earned \$11.50 an hour. Fifty cents of the claimant's wage was for working a night shift, instead of a day shift.

The claimant established a claim for benefits during the week of May 17, 2009. The record indicates the claimant's highest average weekly wage for this claim year is \$589.02.

During the first week or second week of August, the employer contacted the claimant and asked him to return to work. The employer offered the claimant work as a forklift operator on the day shift. All employees working for the employer took a 15 percent reduction in pay, so the employer offered the claimant \$9.35 an hour.

Although the claimant was able to and available for work, he declined the offer them of work because of the reduction in his hourly pay.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work without good cause. Iowa Code section 96.5-3-a. One factor in determining suitability of a job offer is the wage the employer offers. When a claimant has been unemployed for 6 to 12 weeks, the wage offered must equal 75 percent of his average weekly wage in his highest quarter. When a claimant has been unemployed for 13 to 18 weeks, the wage offered must equal 70 percent of the average weekly wage in his highest quarter. Iowa Code § 96.5-3(a)1 & 2.

Based on his average weekly wage, which was the first quarter of 2008, the wage the employer offered the claimant must total \$412.00 to \$441.00 a week. The administrative law judge recognizes the claimant may have earned overtime, but the law states the criteria is the average weekly wage in the highest quarter. The law does not base the wage factor on a claimant's hourly wage. The variation, \$412.00 to \$441.00 occurs because the employer did not know what week the employer asked the claimant to return to work. When you multiply \$9.35 by 40, this equals a weekly salary of \$374.00. When the employer asked the claimant to return to work, the employer did not offer him a weekly salary of \$412.00 to \$441.00. Based on the wages the employer offered the claimant to return to work, the claimant established good cause to decline the offer to return to work. The claimant remains qualified to receive benefit after the employer's August 2009 offer to return to work.

DECISION:

The representative's June 22, 2010 decision (reference 01) is affirmed. The claimant declined the employer's August 2009 offer to return to work because the wages offered did not meet the guidelines of the law. In August 2009 the claimant remains qualified to receive benefits even though he declined the employer's offer to return to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw