

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG L GLOSSER
Claimant

APPEAL NO. 07A-UI-07612-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDINAL COMMUNITY SCHOOL DIST
Employer

OC: 07/01/07 R: 03
Claimant: Respondent (3)

Section 96.5-1 – Voluntary Quit for Good Cause Attributable to Employer
Section 96.5-3-a – Offer of Suitable Work

STATEMENT OF THE CASE:

Cardinal Community School District filed an appeal from a representative's decision dated August 6, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a hearing was scheduled for and held in Ottumwa, Iowa, on December 4, 2007. Mr. Glosser participated personally. The employer participated by Mr. Arnie Snook, superintendent, and Teena Snyder, secretary/business manager. Exhibits 1-4 were received into evidence.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer, or whether the claimant was discharged for misconduct in connection with his work, and whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for this employer beginning in the year 1984. Mr. Glosser worked as a full time maintenance lead custodian employed on a year-to-year contract with the Cardinal Community School District. The claimant's most recent contract with the school district expired on June 30, 2007.

Prior to the end of the most recent yearly contract in effect between the claimant and the school district, the district informed the claimant and other custodial workers that at the expiration of the year's contract, it would not be renewed. The district had planned to award the maintenance contract to the FBG Company and to have services performed by employees of that company in the future. In an effort to assist current custodial workers in finding new employment with the FBG Company, the school district provided brochures and scheduled a meeting for custodial workers. During the May 21, 2007 meeting, the school district informed current contractual employees that the rate of pay to be offered in the future by the FBG Company would be the same as custodial workers were currently receiving and medical insurance benefits would be available. The school district representative also made reference to profit sharing and other incentives that FBG Company might be offering prospective candidates for employment. Although the claimant's employment with the school district under his contractual agreement would not come to an end until June 30, 2007, the claimant and other custodial workers were informed that they must complete applications for FBG

Company and submit them within three days of the May 21 meeting in order to be considered for the positions that would be available July 1, 2007.

Mr. Glosser chose not to submit an application, as his employment with the school district had not yet ended and he did not desire to work for the FBG Company.

It is the school district's position that as they attempted to accommodate current employees by easing the transition from contractual workers with the school district to employees of FBG Company in the future, the school district should not be subject to charging for unemployment insurance benefits subsequently paid to the claimant. The district contends that had the claimant submitted an application for employment to FBG, he may have been hired at the same or higher rate of pay and benefits, and thus the claimant is unemployed through no fault of the school district.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is first whether the claimant's separation from employment took place under disqualifying conditions. It did not. The evidence in the record clearly establishes that Mr. Glosser and other similarly situated custodial workers were employed under a year-to-year contract with the Cardinal Community School District and at the conclusion of the most recent contractual period, the school district elected not to renew the claimant's work contract. The claimant completed the contract of hire by working until the specific period of time had elapsed, and the school district was the moving party that elected not to renew the year-to-year contract.

871 IAC 24.26(22) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

The claimant was hired for a specific period of time and completed the contract of hire by working until the specific period of time had ended.

The second question before the administrative law judge is whether the evidence establishes that the claimant should be disqualified from receiving unemployment insurance benefits because he refused an offer of suitable work. He should not. The evidence in this case clearly establishes that Mr. Glosser was not offered employment by FBG Company, but instead was only given the option to submit an application. The application was required to be submitted by the claimant within three days of the May 21, 2007 meeting date, while the claimant still continued to be employed by the Cardinal Community School District and before the claimant opened a claim for unemployment insurance benefits. The evidence establishes that the claimant was not "offered work", but was instead given the opportunity to "apply" for a position in the future. Any offer of work to the claimant was contingent upon FBG Company's decision whether or not to offer the claimant employment.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Because the claimant had not opened a claim for unemployment insurance benefits and remained employed by the school district at the time the offer to apply for future employment took place, the claimant had no obligation to apply for work with another company. The evidence establishes that the claimant was not offered work at that time, but instead was only given an offer to apply for future work. For these reasons, the administrative law judge concludes that the claimant has not refused an offer of suitable work during his benefit year as defined by 871 IAC 24.1(21).

While the school district's attempts to minimize the impact of becoming unemployed for its custodial workers is commendable, these efforts do not change the fact that the claimant's unemployment was attributable to the employer's decision not to renew the yearly contract. Mr. Glosser performed his duties as agreed and stayed until the district did not renew his contract. The evidence establishes that the claimant did not refuse an offer for suitable work made to the claimant during the period of time that he had opened a claim for unemployment insurance benefits as required by the law.

DECISION:

The representative's decision dated August 6, 2007, reference 01, is hereby affirmed as modified. The claimant's separation from employment was attributable to the employer. The claimant is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw