

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY L GERDOM
Claimant

APPEAL NO. 11A-UI-07850-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUENING ROCK PRODUCTS INC
Employer

**OC: 01/02/11
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available for Work
Section 96.5-3-a – Offer of Suitable Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 8, 2011, reference 01, which denied benefits, finding that the claimant refused a recall to suitable work on April 15, 2011. After due notice was issued, a telephone hearing was held on July 11, 2011. The claimant participated personally. The employer participated by Mr. Ron Fadness, attorney at law, and Mr. Arbin Lanser, operations manager.

ISSUE:

At issue is whether the claimant refused an offer of suitable work with a former employer and whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tony Gerdom was employed by Bruening Rock Products as a full-time ready mix driver and was paid by the hour. The claimant was laid off due to the seasonal nature of his work.

On April 14, 2011, Mr. Gerdom was contacted by the company and recalled to his regular job duties and pay effective April 15, 2011. Mr. Gerdom agreed to report for the recall on April 15, 2011; however, his acceptance was conditioned upon his ability to find a babysitter. Mr. Gerdom did not report for the recall, due to child care issues. One week later, the claimant had satisfactory child care arrangements and notified the employer of his availability to return to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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".

871 IAC 24.22(1)a and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The administrative law judge concludes, based upon the evidence in the record, that the employer's offer was suitable; however, the claimant had a good-cause reason for refusing. Mr. Gerdom refused the recall to suitable work that was to begin on April 15, 2011, because he was not available for a one-week period until April 21, 2011, when he had made suitable child care arrangements. Therefore, the claimant is not disqualified from receiving benefits but is not eligible for the one-week period ending April 23, 2011, because he was not available for work during the major portion of that benefit week.

DECISION:

The representative's decision dated June 8, 2011, reference 01, is modified. The claimant did decline an offer of work but was unavailable at the time. Benefits are withheld for the one-week period ending April 23, 2011. The claimant is eligible to receive unemployment insurance benefits after that date, provided he has met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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