

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

JAMES H CLARK
2415 – 59TH ST
DES MOINES IA 50322

SIOUX CITY BRICK & TILE COMPANY
PO BOX 807
SIOUX CITY IA 51102-0807

Appeal Number: 06A-UI-04526-CT
OC: 03/26/06 R: 02
Claimant: Respondent (4)

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 96.5(3)a – Refusal of Work
Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sioux City Brick & Tile Company filed an appeal from a representative's decision dated April 19, 2006, reference 02, which held that no disqualification would be imposed regarding James Clark's refusal of recall. After due notice was issued, a hearing was held by telephone on May 25, 2006. The employer participated by David Clausen, Manager of Safety and Human Resources. Mr. Clark responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Clark began working for Sioux City Brick & Tile on July 21, 2004 as a contract employee working through a temporary placement firm. He was hired September 27, 2004 and continued to work full time until laid off on December 23, 2005. At that point, it was anticipated that he would return to work the first week in February of 2006.

On February 8, 2006, a letter was mailed to Mr. Clark advising that he was to return to work on February 20. He did not respond to the letter. During the week of February 13, a call was placed to his home to determine if he intended to return to the employment. Mr. Clark's wife indicated that he would not be returning. He had found other employment during the layoff.

Mr. Clark filed an additional claim for job insurance benefits effective December 11, 2005. He was paid job insurance benefits for each of the six weeks ending February 4, 2006. According to records of Workforce Development, he worked in other employment from February 6 until March 22, 2006. He earned at least ten times his weekly job insurance benefit amount in insured wages after refusing recall to Sioux City Brick & Tile Company.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed as a result of Mr. Clark's refusal of recall effective February 20, 2006. An individual who refuses recall without good cause is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. Mr. Clark was employed elsewhere when he was recalled by Sioux City Brick & Tile Company in February of 2006. The law considers this good cause to refuse an offer of work. See 871 IAC 24.24(7). Therefore, no disqualification may be imposed for the refusal.

Mr. Clark's refusal of recall had the effect of severing his employment relationship. Therefore, he became separated from Sioux City Brick Tile Company as of February 20, the date on which he was to return to work from layoff. It appears that he left in good faith for the sole purpose of accepting work elsewhere. As such, his separation was not a disqualifying event. See Iowa Code section 96.5(1)a. However, Sioux City Brick & Tile Company is not liable for job insurance benefits for any period subsequent to February 20, 2006.

DECISION:

The representative's decision dated April 19, 2006, reference 02, is hereby modified. No disqualification is imposed for Mr. Clark's refusal of recall as he was employed elsewhere at the time. He was separated from Sioux City Brick & Tile Company effective February 20, 2006 when he quit for other employment. Benefits are allowed, provided he satisfies all other conditions of eligibility and is not otherwise disqualified from receiving benefits. Sioux City Brick & Tile Company will not be charged for benefits paid after February 20, 2006.

cfc/pjs