

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

DAMAN C JULIAN
730 S 6TH ST
CLINTON IA 52732

J T CULLEN COMPANY INC
PO BOX 311
FULTON IL 61252

Appeal Number: 06A-UI-03028-CT
OC: 12/18/05 R: 04
Claimant: Respondent (2)

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 96.4(3)a – Refusal of Work

STATEMENT OF THE CASE:

J T Cullen Company, Inc. (Cullen) filed an appeal from a representative's decision dated March 7, 2006, reference 05, which held that no disqualification would be imposed regarding Daman Julian's refusal of work. After due notice was issued, a hearing was held by telephone on April 4, 2006. The employer participated by David Jones, Plant Manager, and Travis Peter, Team Leader. Exhibit One was admitted on the employer's behalf. Mr. Julian did not respond to the notice of hearing.

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: Mr. Julian was previously employed by Cullen from January 5 until September 1, 2005. Beginning about two months after the separation, he contacted David Jones, Plant Manager, on several occasions in an effort to get his job back. On February 21, 2006, he was interviewed and offered a welding position at \$11.00 per hour, the same rate of pay he had received during this previous employment. At the time of the offer, employees were working 55 hours per week. Mr. Julian would have worked a minimum of 40 hours each week. He was scheduled for a drug screen on February 22, 2006. He did not appear for the testing and did not contact the employer until approximately two weeks later. He indicated at that time that he had been unable to make the appointment for drug testing.

Mr. Julian filed a claim for job insurance benefits effective December 18, 2005. The average weekly wage paid to him during that quarter of his base period in which his wages were highest was \$588.48. He has not claimed weekly benefits since the week ending February 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed as a result of Mr. Julian's February 22, 2006 refusal of work. An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. One of the criteria for determining if work is suitable is the amount of wages offered. The work offered to Mr. Julian was offered during the tenth week after he filed his claim for job insurance benefits. Therefore, the job had to pay at least 75 percent of the average weekly wage paid to him during that quarter of his base period in which his wages were highest. In other words, the job had to pay at least \$441.36 in order to be considered suitable work.

At the time the work was offered to Mr. Julian on February 21, 2006, the shop was working 55 hours per week. This computes to a weekly wage of \$605.00, more than the \$441.36 required to be considered suitable work. Assuming that 55 hours of work would not have been available every week, Mr. Julian would have worked a minimum of 40 hours each week. If he worked only a 40-hour week, the wages would be \$440.00, \$1.36 less than the amount required by the statute. Under the circumstances, the administrative law judge does not consider the \$1.36 per hour difference to be significant enough to render the work offered unsuitable. One of the factors considered is that Mr. Julian actively sought the employment by asking the employer on several occasions to rehire him. Another factor is that he accepted the employment in spite of the wages offered.

For the reasons cited herein, the administrative law judge concludes that the work offered on February 21 and declined on February 22 was suitable work. Inasmuch as good cause for the refusal has not been established, benefits are denied. Given the fact that he had drug testing scheduled for Wednesday, February 21, the administrative law judge presumes Mr. Julian would not have been able to start the job prior to February 25 as the employer would have to wait for the drug test results. Therefore, benefits are denied as of the Sunday of the following week, February 26, 2006. Since he has not claimed job insurance benefits since the week ending February 25, this reversal of the prior allowance does not result in an overpayment of benefits to Mr. Julian.

DECISION:

The representative's decision dated March 7, 2006, reference 05, is hereby reversed. Mr. Julian refused suitable work with Cullen on February 22, 2006 for no good cause. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/tjc