

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW S LOWN
Claimant

APPEAL NO: 11A-UI-15891-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEE GRADING & EXCAVATING INC
Employer

OC: 11/06/11
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Refusal of Recall to Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 8, 2011 determination (reference 02) that disqualified him from receiving benefits because he refused the employer's recall to return to work. The claimant participated in the hearing. Carissa Oltman, the secretary, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits because the employer did not recall him to return to work.

ISSUE:

Did the claimant refuse the employer's recall to return to work?

FINDINGS OF FACT:

The claimant started working as a full-time heavy machine operator for the employer in August 2011. The claimant worked on November 2 and was off work the rest of the week because of the weather. The claimant worked on November 7 after the employer called and asked him to work. The claimant worked until 5 p.m. on November 7.

The claimant reported to work on November 8, 9, 10, and 11. The employer did not have any work for him to do these days because of the wet weather. On November 11, when the employer did not have work for him again, the claimant asked if he should sign up for unemployment insurance benefits. The employer indicated that would be smart. The claimant established a claim for benefits during the week of November 6, 2011.

One of the employer's foremen contacted the claimant later and understood the claimant had gone to the union hall for other work. The foreman understood the claimant was working for another employer. After November 11, the employer did not contact the claimant to return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he refused a recall to return to work without good cause. Iowa Code § 96.5(3)a. The facts establish the claimant's last day of work for the employer was November 7. The last day the claimant talked to management was November 11. On November 11, the employer confirmed there was no work for the claimant to do and the claimant would be smart to establish a claim for unemployment insurance benefits.

The employer's witness did not have personal information about the issue addressed at the hearing. Instead, she relied on information from employees who did not testify at the hearing. The claimant's testimony is credible and must be given more weight than the employer's unsupported hearsay information. The evidence establishes the employer did not ask the claimant to return to work after November 7. Since the employer did not recall the claimant back to work after November 7, the claimant is eligible to receive benefits as of November 6, 2011.

The employer is not one of the claimant's base period employers and will not be charged for benefits paid to the claimant during his current benefit year.

DECISION:

The representative's December 8, 2011 determination (reference 02) is reversed. The employer did not recall the claimant to return to work after November 7, 2011. Therefore, the claimant is eligible to receive benefits as of November 6, 2011, provided he meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw