

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA A BARBOUR
Claimant

APPEAL NO. 09A-UI-18799-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SJM CONSTRUCTION INC
Employer

**Original Claim: 09/20/09
Claimant: Appellant (2)**

Section 96.5-3-a – Offer of Suitable Work

STATEMENT OF THE CASE:

Joshua Barbour filed a timely appeal from a representative's decision dated December 7, 2009, reference 01, which denied benefits upon a finding that the claimant refused a recall to suitable work on November 12, 2009. After due notice was issued, a telephone conference hearing was scheduled for and held on January 25, 2010. The claimant participated personally. The employer participated by Steven Mall, company president.

ISSUE:

At issue is whether the claimant refused a recall to suitable work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Joshua Barbour began employment with SJM Construction, Inc. approximately five years ago. Mr. Barbour is employed as a full-time field carpenter and is paid by the hour. In October 2009, the claimant was temporarily laid off due to lack of work.

On November 24, 2009, the claimant initiated a phone call to Mr. Mall, the company president, regarding an upcoming fact-finder's conference. The claimant had not been contacted to return to work as of that time by the company; however, Mr. Mall indicated that work might be resuming for the claimant. Mr. Mall indicated that he would contact Barry, a company employee, about the matter. Mr. Barbour assumed that the company would thus be contacting him when he was to be recalled. The parties had no further contact until December 4, 2009, at which time a bona fide offer of recall to suitable work was made to Mr. Barbour. The claimant returned to work the next working day, Monday, December 7, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not refuse a bona fide offer of recall to suitable work on November 12, 2009.

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 24.24(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.

In this case, the claimant has established by a preponderance of the evidence that Mr. Barbour did not refuse a bona fide offer of return to suitable work on November 12, 2009, nor on November 24, 2009. The claimant's reasonable interpretation of statements made to him led Mr. Barbour to conclude that an actual offer to return to work was not yet being made and that he would be further contacted by the company when SJM Construction was ready to recall him to work.

On December 4, 2009, the parties were in contact and at that time a bona fide offer of a recall to suitable work was made to the claimant. Mr. Barbour responded by reporting to work the next working day.

Based upon the facts of this case and the application of the law, the administrative law judge concludes that the claimant did not refuse a bona fide offer of recall to suitable work. Benefits are allowed, providing Mr. Barbour meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated December 7, 2009, reference 01, is reversed. The claimant did not refuse a bona fide offer of recall to suitable work. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw