

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A CANDALES

Claimant

APPEAL NO. 09A-UI-09748-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL STATE GUTTER INC

Employer

Original Claim: 11/30/08

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 25, 2009, reference 01 that held he refused a recall to suitable work with All State Gutter on May 27, 2009, and that denied benefits. A telephone hearing was held on July 29, 2009. The claimant participated. Rick Ross, Owner, and Deb Nixon, Office Manager, participated for the employer.

ISSUES:

Whether the claimant refused a recall to suitable work.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time gutter installer from October 28, 2006 until his layoff for lack of work on December 2, 2009. Owner Ross telephoned the claimant on April 23, 2009 to alert him that business was picking up and he would be receiving a call back to work. The claimant requested his pay be changed from a commissioned-payroll employee to contractor with the payments being made to his father's company. Ross denied the request and he asked the claimant to call back to say whether he would return to work as an employee. The claimant did not make the return call to Ross.

Office Manager Nixon telephoned the claimant on May 4 and left a message that the employer wanted him to return to work on May 6 with a request he call to confirm. Nixon made a second call to the claimant on May 6 requesting that he return to work under the same terms and conditions as he had previously worked for the employer. The claimant replied that he wanted to be paid as a 1099 contractor, not as an employee, as he was going through a Florida divorce proceeding, and he did not want to change his financial statement that unemployment was his sole income. Nixon denied the request. The claimant questioned whether the employer could

guarantee full-time work, and Nixon insisted he needed to return to work that day. When the claimant balked, Nixon stated he should turn in his keys if he was not coming back.

The claimant had a conversation with Owner Ross, who affirmed the employer's denial to pay him as a contractor. The employer had full-time work, as it recently hired a new installer. The claimant turned in his keys and failed to return to work. The claimant re-opened his claim effective May 31, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-a 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.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The administrative law judge concludes that the claimant refused a recall to suitable work with the employer on May 6, 2009, and that benefits are denied.

All State Gutter is the claimant's base period employer, and the wage credits he earned with this employer made him eligible for benefits when he was laid-off in December 2008 without protest. The employer effectively communicated to claimant on May 4, and May 6, 2009, a recall to work in his former job upon the same terms and conditions that he previously worked for the employer. The claimant's refusal for personal reasons (divorce) is without good cause. When the claimant later turned-in his keys to the employer, he confirmed the recall job refusal.

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".

The administrative law judge further concludes that the claimant is not able and available for work effective May 6, 2009, due to placing a restriction on his employability. When the claimant denied work for the employer as a paid employee, he placed a job restriction on any insured work.

DECISION:

The department decision dated June 25, 2009, reference 01 is affirmed. The claimant is disqualified May 6, 2009 for refusing a recall to suitable work, and an availability disqualification for placing a restriction on him working for insured work as an employee. Benefits are denied until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw