

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN D ROLFES

Claimant

APPEAL NO. 09A-UI-05765-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG RIVER CAST STONE LLC

Employer

OC: 02/01/09

Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

John Rolfes filed a timely appeal from the April 2, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 8, 2009. The claimant participated personally. The employer participated by Mr. Jeff Then, Company Owner and Ms. Carrie Taylor, Secretary.

ISSUE:

The issue is whether the claimant refused a suitable offer of work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked as a general laborer (tamper) for Big River Cast Stone LLC for approximately two years before being laid off work on February 1, 2009. The employees were told that the layoff was temporary and that they would subsequently be recalled by the company.

On March 13, 2009, Mr. Rolfes was reached personally by telephone and informed that he was being officially recalled to work effective Monday, March 16, 2009. Mr. Rolfes indicated that he had "other plans" and that he would be reporting Wednesday of that week. Although the employer reminded the claimant that week of the recall to work, Mr. Rolfes did not report back or provide any notification. After the claimant had not returned to the company as agreed upon and had failed to report or provide notification for three consecutive workdays the employer reasonably concluded the claimant would not be returning and filled his job position.

During this time Mr. Rolfes was engaged in self-employment hauling. The claimant continues to be engaged in self-employment at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant did refuse this suitable offer of work.

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The employer's offer was suitable as it did meet the minimum wage requirements set out above for an offer to be considered suitable. The offer was suitable as it involved the same type of work at the same place of employment and at the same rate of pay for the same employer. Benefits are denied.

DECISION:

The representative's decision dated April 2, 2009, reference 01, is affirmed. The claimant refused a recall to suitable work on March 16, 2009. Benefits are withheld until the claimant has earned ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css