

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN C PROCTOR
Claimant

APPEAL NO: 09A-UI-15357-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUALITY PRODUCTS
Employer

OC: 08/16/09
Claimant: Appellant (2)

Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 1, 2009, reference 02, that held he refused a recall to suitable work with Quality Products on October 1, 2009, and benefits are denied. A telephone hearing was scheduled for November 13, 2009. The claimant and employer did not participate. Official notice was taken of the administrative file documents.

ISSUE:

Whether the claimant refused a recall to suitable work.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant worked for the employer as a full-time laborer on the second shift from August 27, 2008 until his lay-off for lack of work on September 18, 2009. The employer advised the claimant and other employees it would not protest unemployment claims. The claimant's second shift supervisor called the claimant on October 10 to come back to work on October 14, but the claimant refused to work on third shift.

The claimant and the employer representative were unavailable when called for the hearing.

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 had a good cause to refuse a recall to work effective October 14, 2009 that is not suitable due to the change of job shifts.

The claimant was a second shift worker when he was laid-off for lack of work on September 18, 2009. The claimant had a good cause to refuse the October 14 recall for third shift work.

DECISION:

The department decision dated October 1, 2009, reference 02, is reversed. The claimant had a good cause to refuse a recall to work, and no disqualification is imposed October 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs