

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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JASON W PIERSON

Claimant,

and

CLEARY BUILDING CORP

Employer.

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HEARING NUMBER: 09B-UI-09874

EMPLOYMENT APPEAL BOARD  
DECISION

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 871 IAC 26.8(5)

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The claimant, Jason W. Pierson, worked for Cleary Building Corp. until he was laid off on December 27, 2007. At some point, he accepted a job from a former employer (Global). On April 14, 2008, Cleary Building Corp., attempted to recall the claimant by telephone to return to work, but the claimant did not answer the phone. The employer left a message to which the claimant returned the call, but was informed that someone would call him back. On September 19, 2008, Global laid Mr. Pierson off.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.24(1)" a' *Bona fide offer of work* provides:



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 the instant case, the Fact-finding Interview notes, specifically, indicate that Cleary Building Corp., made no personal contact with Mr. Pierson within the meaning of the aforementioned rule. The only contact made was through a telephone message to which the claimant did respond, also leaving a message. There is nothing in the file or in the Fact-finding notes to establish that the employer ever spoke to the claimant extending an offer of work to him such that he refused.

In order to determine whether Mr. Pierson failed to accept suitable work, the employer must have *personally* spoken or sent a registered letter offering the claimant a specific job. If that occurs, and the claimant responds (in kind) a rejection of that offer, then for the claimant can be said to have failed to accept suitable work. Here, neither party actually spoke to the other wherein an offer of work was made that the claimant refused. Thus, based on this record, we conclude that the employer failed to make a bona fide offer work to Mr. Pierson. Consequently, he did not refuse a suitable offer of work.

#### **DECISION:**

The administrative law judge's decision dated July 29, 2009 is **REVERSED**. The claimant did not refuse a suitable offer of work. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

#### **DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/fnv