

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS P VANHORSEN
Claimant

APPEAL NO. 09A-UI-14792-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSENBOOM MACHINE & TOOL INC
Employer

OC: 12/21/08
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Thomas VanHorsen filed a timely appeal from a representative's decision dated September 28, 2009, reference 03, which held him not eligible to receive unemployment insurance benefits upon a finding that on August 10, 2009, the claimant refused a recall to suitable work with Rosenboom Machine & Tool, Inc. After due notice, a telephone hearing was scheduled for and held on October 30, 2009. Although duly notified, the claimant did not participate personally. Participating as a witness/representative was his mother, Patricia VanHorsen. The employer participated by Ms. Dena Nanniga, Human Resource Generalist. Employer's Exhibit One was received into evidence.

ISSUE:

The issue in this matter is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Thomas VanHorsen was employed as a full-time cylinder line operator/welder for Rosenboom Machine & Tool, Inc. from June 20, 2005 until January 28, 2009 when he was laid off work by the company. Mr. VanHorsen was employed full-time and was last paid \$11.23 per hour. At the time of the lay-off, the claimant was informed of a possible recall back to employment.

On August 4, 2009, the employer sent the claimant a letter indicating the possibility of a recall to work in his regular job position and pay. On August 10, 2009, numerous attempts were made by the company to contact Mr. VanHorsen and the claimant was sent a letter once again offering him his regular pay and position with the company. The company reasonably concludes that the claimant was aware of the recall as the company had Brad Oster call the claimant. Mr. Oster is personally familiar with Mr. VanHorsen. The claimant did not accept the recall indicating that he had found other employment.

Mr. VanHorsen continued to claim unemployment insurance benefits for the period of time of August 10, 2009, the date of his refusal through October 3, 2009.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The evidence in the record establishes that a bona fide offer of work was made to Mr. VanHorsen on or about August 10, 2009 when the employer repeatedly contacted the claimant to offer him to return to the same job and pay. The employer also sent two letters to the claimant and initiated a telephone call by a personal friend to personally ensure that the claimant was aware of the job offer. Although aware of the offer, Mr. VanHorsen refused the offer to return to full-time work as he had apparently accepted other employment that was not full time and the claimant continued to claim partial unemployment insurance benefits.

Based upon the evidence in the record, the administrative law judge concludes that the claimant has not established good cause for failing to return to available full-time employment at the same hours, pay and duties with this employer. Benefits are withheld.

DECISION:

The representative's decision dated September 28, 2009, reference 03, is affirmed. The claimant refused a recall to suitable work on August 10, 2009. The claimant is disqualified until he has worked in and earned wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs