

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN J ANDREWS
Claimant

APPEAL NO. 09A-UI-19115-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNNINGHAM INC
Employer

**Original Claim: 07/26/09
Claimant: Respondent (4)**

Section 96.5(3)a – Refusal of Work
Section 96.4(3) – Able and Available
Section 96.4(6) – Division Approved Training

STATEMENT OF THE CASE:

Cunningham, Inc. filed an appeal from a representative's decision dated December 16, 2009, reference 02, which held that no disqualification would be imposed regarding Benjamin Andrews' October 30, 2009 refusal of recall. After due notice was issued, a hearing was held by telephone on February 2, 2010. Mr. Andrews participated personally. The employer participated by Denise Spurgeon, Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Andrews should be disqualified from receiving job insurance benefits because of his refusal to return to work upon recall.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Andrews began working for Cunningham, Inc. on February 25, 2005 and last performed services on July 24, 2009. He worked full-time as an HVAC mechanic. He was laid off on July 24, 2009, but not given a date or time frame by which he would be recalled. He checked with the employer periodically thereafter regarding the availability of work, but none was forthcoming.

Mr. Andrews decided to take classes as a diesel mechanic in case he was not recalled from layoff. He was contacted on October 30 about returning to work on November 9 as a mechanic on the roofing crew. He had the necessary skills to perform the job. It would have been full-time work at the same rate of pay he had been receiving. The employer could not guarantee that the work would be long-term. It was anticipated at that time that the job would last from three to six weeks. Mr. Andrews told the employer on October 30 that he had enrolled for classes and would be attending school if he received the financial aid he needed. He subsequently notified the employer that he would be attending school and, therefore, not returning to his job.

Mr. Andrews began classes at Indian Hills Community College on November 17, 2009 as a full-time student and is slated to graduate in May of 2011. Workforce Development has allowed Division Approved Training (DAT) for the period November 15, 2009 through February 27, 2010 and the period from February 21, 2010 through June 5, 2010. Cunningham, Inc. is Mr. Andrews' only base period employer.

REASONING AND CONCLUSIONS OF LAW:

It is undisputed that Mr. Andrews refused recall to work with Cunningham, Inc. effective November 9, 2009. An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. Before a disqualification is imposed, the evidence must establish that the individual was available for work within the meaning of Iowa Code section 96.4(3). Mr. Andrews was not available to accept the work offered on October 30, because he had plans to attend school. Therefore, he was not available for work.

Mr. Andrews has been given permission by Workforce Development to receive benefits while attending school. An individual who has been granted DAT may not be disqualified from benefits pursuant to either section 96.4(3) or section 96.5(3)a. Iowa Code section 96.4(6)a. As such, no disqualification may be imposed for Mr. Andrews' refusal to return to work on November 9, 2009. No employer's account is charged for benefits paid to an individual while that individual is on DAT. For the above reasons, benefits are allowed to Mr. Andrews and Cunningham, Inc. is relieved of benefit charges effective November 9, 2009 through June 5, 2010.

The administrative law judge appreciates that there is a one-week lapse between the time Mr. Andrews was to return to work on November 9 and the effective date of his DAT, which was November 15. However, he had made plans to attend school and was merely waiting for classes to begin. As a practical matter, it would be unreasonable to expect him to return to work for one week before leaving for classes. Since his failure to return was due to school attendance, the employer should be allowed the benefit of section 96.4(6)a as of November 9, 2009.

DECISION:

The representative's decision dated December 16, 2009, reference 02, is hereby modified. Benefits are allowed, provided Mr. Andrews is otherwise eligible, as he had good cause for refusing recall by Cunningham, Inc. The employer is relieved of charges effective November 9, 2009, because Mr. Andrews was receiving DAT.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw