

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND A FOWLER

Claimant

APPEAL NO. 09A-UI-09509-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDINAL GLASS INDUSTRIES INC

Employer

OC: 01/25/09

Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 22, 2009, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 20, 2009. Claimant participated. Employer participated through Lori Ramsey, Human Resources Manager. Exhibit 1, pages 1—3, was admitted into evidence.

ISSUE:

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good-cause reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked full time for the employer. He began his employment in November 2003. His last day of with the employer was May 3, 2009. The claimant was on layoff status on March 8, 2009. Employer made an offer of recall the claimant on May 1, 2009. That offer included the same wages, benefits and total number of hours he had previously been receiving from his employer. The only difference was that the offer was for the third shift. The claimant had worked the second shift all of the time he had worked for the employer, over five years. He never worked the first or third shift. The claimant would watch his fiancé's children when she was at her job on a first shift. Switching to third shift would result in additional daycare cost of approximately \$400.00 per month. The employer's handbook provides that employee's may be assigned to a different shift. The claimant acknowledged in writing he received the handbook.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code § 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.

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.

The claimant worked for over five years on the second shift. He had never worked on the third shift. The claimant would have incurred substantial daycare costs if he went to the third shift. Reviewing the claimant's history with his employer the offer was not suitable.

DECISION:

The June 22, 2009, reference 02, decision is reversed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css