

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY BURNS
Claimant

APPEAL NO. 09A-UI-07772-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN SMALL
Employer

**Original Claim: 04-12-09
Claimant: Respondent (1)**

Section 96.5(3)a – Work Refusal
871 IAC 24.24(1)a – Bona Fide Offer of Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 15, 2009, reference 01, decision that found the employer did not make an offer of work to the claimant and allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 6, 2009. The claimant participated in the hearing. Kevin Small, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The claimant worked as a seasonal full-time concrete worker/laborer for John Small and was laid off when the weather changed November 12, 2008. The employer was hired by the claimant's step-aunt to do some concrete work for her April 15, 2009. The employer tried to call the claimant two or three times to ask him to come back to work, but his cell phone would not accept messages. The employer tried to call the claimant's emergency contact number but it did not ring through. Consequently, the employer never talked to the claimant in person or sent a registered letter asking him to return to work.

REASONING AND CONCLUSIONS OF LAW:

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

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.

There was no bona fide offer of work made to the claimant, because the employer did not speak to him personally or by registered letter and, consequently, the claimant did not make a definite refusal. Under these circumstances, the administrative law judge must conclude that although the claimant's testimony was not particularly credible, there was no bona fide offer of work made. Therefore, benefits must be allowed.

DECISION:

The May 15, 2009, reference 01, decision is affirmed. The claimant did not refuse a suitable offer of work, because no bona fide offer of work was actually made. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw