

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK KIEBLER**  
Claimant

**APPEAL NO. 11A-UI-07201-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EDWARDS CAST STONE COMPANY**  
Employer

**OC: 04/17/11  
Claimant: Respondent (2)**

Section 96.5-3-a – Refusal of Recall

**STATEMENT OF THE CASE:**

Edwards Cast Stone Company filed a timely appeal from an unemployment insurance decision dated May 24, 2011, reference 01, that allowed benefits to Patrick Kiebler. After due notice was issued, a telephone hearing was held June 23, 2011 with Mr. Kiebler participating. Manufacturing Manager Doug Edwards and Plant Superintendent Pat Clancy participated for the employer.

**ISSUE:**

Did the claimant refuse recall to suitable work?

**FINDINGS OF FACT:**

Patrick Kiebler began a temporary layoff from employment with Edwards Cast Stone Company on April 15, 2011. He filed a claim for unemployment insurance benefits during the week of April 17, 2011 and requested and received benefits for the two weeks ending April 30, 2011.

On April 30, 2011, Plant Superintendent Pat Clancy called to tell Mr. Kiebler to return to work on the following Monday, May 2, 2011. On Sunday, May 1, 2011, Mr. Kiebler called Mr. Clancy to say that he would not return to work. He is seeking other work in a less dusty environment. Before the layoff Mr. Kiebler had spoken to Mr. Clancy about paint fumes. Mr. Clancy had provided respirators to Mr. Kiebler. Mr. Kiebler had not complained about dust in the past. Mr. Kiebler would have been returning to his former position at his regular rate of pay.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether Mr. Kiebler refused recall to suitable work. He did.

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.

The administrative law judge concludes that the employer has established that it completed a recall notification and that Mr. Kiebler knew that he was scheduled to return to his regular position at his former rate of pay. Mr. Kiebler declined to return to work because of the dusty environment, something he had not brought to the attention of management during his employment. He also testified that he had not consulted a physician during the time of his layoff. The administrative law judge concludes that the claimant has not established a justifiable reason for refusing recall. Benefits are denied effective May 1, 2011.

**DECISION:**

The unemployment insurance decision dated May 24, 2011, reference 01, is reversed. The claimant refused recall to suitable work. Benefits are withheld effective May 1, 2011 until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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