

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS A CROZIER**  
Claimant

**APPEAL NO. 09A-UI-10053-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARDINAL GLASS INDUSTRIES INC**  
Employer

**OC: 02-08-09**  
**Claimant: Appellant (1R)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 1, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 17, 2009 in Creston, Iowa. Claimant did participate. Employer did participate through Lori J Ramsey, Human Resources Manager. Employer's Exhibits One through Eight were entered and received. Claimant's Exhibits One through Thirteen were entered and received.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laborer full time beginning April 18, 1999 through May 4, 2009. The claimant was laid off on December 1, 2008 through April 30, 2009 when he was called back to return to work on May 4, 2009. The employer was attempting to cut costs by having employees work only four days per week at ten hours per day. The claimant refused to work ten hours per day. At the time he refused to work the hours that were available to him he had no work restrictions from any physician. He thought that working an extra two hours per day would hurt his feet. The claimant refused to work the hours when suitable work was available for him.

The claimant has since been separated from his employment. No fact-finding decision has been issued on his separation. Nor has there been a fact-finding decision issued on whether the claimant refused a recall to work. Such issues are remanded for a fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 30, 2009.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant was offered work for ten hours per day for four days per week. He refused to work ten hours per day. The employer has the right to allocate its personnel in accordance with its needs and available resources. The claimant had no medical opinion that limited his ability to work ten hours per day. The claimant had not worked at all for the employer in the five months preceding April 30. The claimant is not willing to work the hours when work is available to him. Accordingly, benefits are denied.

**REMAND:** The separation issue and the work refusal issue delineated in the findings of fact is remanded for an initial review and determination.

**DECISION:**

The July 1, 2009, reference 01, decision is affirmed. The claimant is not able to work and available for work effective April 30, 2009. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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