

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS O JACKSON

Claimant

APPEAL NO. 08A-UI-02645-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID STATES BUILDERS INC

Employer

**OC: 01/27/08 R: 01
Claimant: Appellant (5)**

Iowa Code section 96.5(3)(A) – Refusal of Suitable Work
Iowa Code section 96.4(3) – Able & Available
871 IAC 24.22(2)(j) – Reemployment at the End of a Negotiated Leave of Absence

STATEMENT OF THE CASE:

Marcus Jackson filed a timely appeal from the March 11, 2008, reference 02, decision that denied benefits and concluded Mr. Jackson had refused recall to suitable work on February 4, 2008. After due notice was issued, a hearing was held on March 31, 2008. Mr. Jackson participated. Craig Wampler, President, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-02646-JTT.

ISSUES

Whether Mr. Jackson refused recall to suitable work with Mid States Builders, Inc., on February 4, 2008.

Whether Mr. Jackson has been able to work and available for work since he established the claim for unemployment insurance benefits that was effective February 27, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marcus Jackson commenced his full-time employment with Mid States Builders, Inc., in October 2007 and continued as a full-time laborer until he was laid off. On January 28, 2008, Foreman Mark Poulson notified Mr. Jackson that he would be laid off effective January 29, 2008. Mr. Poulson advised Mr. Jackson that there was a memo waiting for him at the employer's office. Mr. Jackson collected the lay-off memo when he returned to the office from a job site on January 28, 2008. The memo provided instructions for establishing a claim for unemployment insurance benefits. The memo also notified Mr. Jackson that the employer expected him to contact the employer on Thursdays to see whether he would be recalled to work the following week. On Thursday, January 31, Mr. Jackson contacted the employer and spoke with Craig Wampler, President. Mr. Wampler told Mr. Jackson that he was being recalled to the employment on Monday, February 4, 2008. Mr. Jackson indicated an interest in returning to the employment. However, on Monday, February 4, 2008, Mr. Jackson did not appear for work and did not notify the employer that he would be absent.

On Tuesday, February 5, 2008, Mr. Jackson appeared at the work place and met with Mr. Wampler. Mr. Jackson told Mr. Wampler that he needed to travel to Chicago to attend the funeral of his sister's father. Mr. Wampler told Mr. Jackson that Mr. Jackson had incurred attendance points under the employer's no-fault attendance policy by being absent without notifying the employer on February 4. Mr. Wampler told Mr. Jackson that he was at risk of exceeding the allowed number of attendance points if he had an additional unexcused absence. Mr. Wampler had previously incurred attendance points for absences due to illness, pre-approved absences, and absences for personal reasons. Mr. Wampler indicated that he would allow Mr. Jackson to continue in the employment and would approve an extended absence so that Mr. Jackson could attend the funeral. Mr. Jackson requested a February 14, 2008, return to work date and Mr. Wampler approved the request. Mr. Wampler told Mr. Jackson that he would have a job when he returned from Chicago. Mr. Wampler directed Mr. Jackson to contact him when Mr. Jackson returned from Chicago. The greater weight of the evidence indicates that this contact was intended to alert the employer that Mr. Jackson was back in Iowa. The greater weight of the evidence does not indicate that Mr. Wampler told Mr. Jackson that a telephone call from Mr. Jackson was required before Mr. Jackson could return to the employment.

On February 8, Mr. Jackson's spouse went to Mid States Builders and collected Mr. Jackson's paycheck. Mr. Jackson's spouse told Mr. Wampler that Mr. Jackson would be returning to work the following Wednesday. The following Wednesday would have been February 13. Mr. Wampler remembered that he had agreed to a February 14 return date and did not alter his expectations.

On February 14, Mr. Jackson did not appear for work. When Mr. Jackson did not appear for work, Mr. Wampler decided to sever the employment relationship. At some point between February 14 and February 18, Mr. Jackson left a message on Mr. Wampler's cell phone. Mr. Jackson advised he had returned from Chicago and asked Mr. Wampler to return his call. Mr. Wampler had already made the decision to sever the employment relationship and did not deem it necessary to return the call. There was no further contact between the employer and Mr. Jackson.

Mr. Jackson established a claim for benefits that was effective January 27, 2008. Mr. Jackson received weekly benefits of \$244.00 for the weeks that ended February 2, February 9, February 16 and February 23. During the week that ended February 2, Mr. Jackson was temporarily laid off. During the weeks that ended February 9, Mr. Jackson was on a leave of absence. During the week that ended February 16, Mr. Jackson was still on a leave of absence and was out of state for the majority of the week. The employment relationship was severed before the benefit week that ended February 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

If an individual refuses to accept a suitable offer of employment with good cause, the individual is disqualified for unemployment insurance benefits until the person has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. See Iowa Code section 96.5(3)(b).

Workforce Development rule 871 IAC 24.24(14)(a) echoes the statute and addresses offers of employment from former employers:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked

in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability 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.

The weight of the evidence in the record indicates that the employer had direct contact with Mr. Jackson on January 31, 2008 and notified Mr. Jackson at that time that he was recalled effective Monday, February 4, 2008. The weight of the evidence indicates that Mr. Jackson at that time indicated a desire to return to the employment. The evidence fails to establish that Mr. Jackson refused the recall to the employment. The evidence indicates instead that Mr. Jackson was absent without notifying the employer on February 4, but made contact with the employer on February 5. The evidence indicates that the employer treated the absence on February 4 as an unexcused absence and did not consider the absence a refusal of the recall. The administrative law judge concludes there was no refusal of employment.

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Workforce Development rule 871 IAC 24.22(2)(j) provides as follows:

Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The greater weight of the evidence in the record establishes that Mr. Jackson failed to return to work on February 14, 2008, the agreed upon return to work date. The evidence indicates that the employer had not agreed to an extension of the leave of absence beyond February 14, 2008. Because Mr. Jackson failed to return at the end of the leave of absence, Mr. Jackson is deemed to have voluntarily quit the employment and is not eligible for unemployment insurance benefits. Mr. Jackson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant. See Iowa Code section 96.5(1)(g).

The administrative law judge finds that the claimant's absence did not involve compelling personal reasons such as are addressed by Iowa Code section 96.5(1)(f).

DECISION:

The Agency representative's March 11, 2008, reference 02, decision is modified as follows. During the benefit week that ended February 2, 2008, the claimant was temporarily laid off and was eligible for benefits, provided he was otherwise eligible. The claimant did not refuse a recall to suitable employment on February 4, 2008. No disqualification will enter concerned the alleged refusal of recall. During the benefit weeks that ended February 9 and 16, 2008, the claimant was on a leave of absence. During these two weeks the claimant was deemed voluntarily unemployed, unavailable, and not eligible for unemployment insurance benefits. The

claimant failed to return to the employment on February 14, 2008, the agreed upon end of the leave of absence and there was no agreement to extend the leave. Because the claimant failed to return at the end of the agreed upon leave, the claimant is deemed to have voluntarily quit the employment and is not eligible for unemployment insurance benefits. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is not a base period employer and the employer's account will not be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw