

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L KEITH
Claimant

APPEAL NO. 07A-UI-02240-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAGEN MASONRY INC
Employer

OC: 11-12-06 R: 03
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2007, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on March 21, 2007. The claimant did participate. The employer did not participate.

ISSUE:

Did the claimant refuse a suitable offer of 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 brick tender full-time beginning September 25, 2006 through November 3, 2006 when he was laid off. He was called back to work for one day on January 3. He attempted to return to work on January 3 but had a car accident on his way to work. The claimant notified the employer of the accident and the reason he missed work on that day. The claimant saw the employer drive by his house to see his wrecked car sitting in the front yard. Thereafter, the employer did not call the claimant to return to work. The claimant now has a working automobile so he is able to get to and from a job.

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.

The claimant attempted to return to work but had a car accident on the way to work. The claimant did not show up for work for the one day recall because he was in a car accident on the way to work. The claimant was not called back to work after the one day call for January 3, 2007. The claimant did attempt to return to work when called back. It was beyond his control due to the car accident. The Iowa Court of Appeals held it was not misconduct when a claimant who needed to drive for the employer lost insurability when he went into a ditch to avoid hitting a deer. The evidence showed no willful violation after he was placed on notice that his driving was a problem. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395 (Iowa App. 1985). The claimant did not intentionally engage in a car accident to avoid work. Since he has established good cause for missing the one day recall and the employer has not established that any offer of work beyond January 3, 2007 was made, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The February 22, 2007, reference 05, decision is reversed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css