

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

COBIE L BREWSTER
6751 COUNTRY HILL RD #1
CEDAR RAPIDS IA 52402

CAMBRIDGE TEMPOSITIONS INC
610 – 32ND AVE SW
CEDAR RAPIDS IA 52404

AMENDED

Appeal Number: 06A-UI-00637-JTT
OC: 12/11/05 R: 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1)(j) – Temporary Employment Agency
871 IAC 24.26(19) – Voluntary Leaving of Temporary Employment
Section 96.5(3) – Refusal of Suitable Offer of Employment
871 IAC 24.24(96) – Refusal of Suitable Offer of Employment
Section 96.3(7) – Recovery of Overpayment.

STATEMENT OF THE CASE:

Cambridge Tempositions filed a timely appeal from the January 9, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 2, 2006. Claimant Cobie Brewster participated. Account Manager Indra Jara represented the employer. Exhibits One and Two were received into evidence. The parties waived formal notice on the refusal of suitable work issue so that the administrative law judge could address the issue of whether the claimant had refused a suitable offer of employment. The administrative law judge took official notice of Workforce Development records regarding benefits disbursed to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cobie Brewster commenced his full-time employment through Cambridge Tempositions in 1996. Mr. Brewster's final assignment was at Dale Lee Distributing. The assignment began November 24, 2004, and ended December 1, 2005, when Dale Lee Distributing terminated the assignment. On Thursday, December 1, Cambridge Account Manager Indra Jara contacted Mr. Brewster and left a voice mail message indicating that the assignment had ended. On Monday, December 4, Mr. Brewster went to Cambridge Tempositions to discuss the fact that the assignment had ended. Cambridge Tempositions desired to place Mr. Brewster in another assignment, but did not have another assignment available at the time. The employment at Dale Lee Distributing had been first shift, Monday through Friday, and had paid \$8.25 per hour.

The employer's written policy required Mr. Brewster to contact the employer within three days of the end of an assignment. The policy was contained in a written handbook, but did not appear in a separate document. Mr. Brewster had received a copy of the handbook at the time of hire.

Cambridge Tempositions subsequently made several attempts to contact Mr. Brewster for the purpose of offering a new assignment. On January 13, Ms. Jara left a voicemail message for Mr. Brewster in which she offered a full-time, first-shift, mail-sorting position in Cedar Rapids that would pay \$7.00 per hour. At the same time, Ms. Jara offered Mr. Brewster a full-time, first-shift food-production position in Cedar Rapids that would pay \$8.25 per hour. On January 17, Ms. Jara left a voicemail message for Mr. Brewster in which she offered another full-time, first-shift food-production position in Cedar Rapids that would pay \$8.25 per hour. On January 18, Ms. Jara left a message for Mr. Brewster reoffering the position. On January 19, Ms. Jara left a voicemail message for Mr. Brewster in which she offered him a full-time, first-shift food-packaging position in Cedar Rapids that would pay \$9.00 per hour. On January 18, Ms. Jara mailed a letter to Mr. Brewster in which she advised Mr. Brewster that she had made several attempts to contact him to offer new assignments, reminded Mr. Brewster of his obligation to check in with the temporary employment agency regarding his availability for employment assignments, and directed Mr. Brewster to contact her to discuss his availability. On January 19, Mr. Brewster received and reviewed the letter. Prior to January 18, Mr. Brewster had been a part-time student. Beginning, January 18, Mr. Brewster was a full-time student. Mr. Brewster had not been interested in full-time work after the assignment with Dale Lee Distributing ended.

Cambridge Tempositions' receptionist maintains a sign-in sheet up at the front desk. Workers looking for employment cannot access the sign-up sheet without the assistance of the receptionist. The receptionist's main duty is to record workers' arrival at the agency. Cambridge Tempositions' sign-up sheet did not reflect any trips to the agency after December 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Brewster voluntarily quit the employment without good cause attributable to the temporary employment agency pursuant to Iowa Code section 96.5(1)(j) by failing to report to the agency within three days of the end of an assignment.

Iowa Code section 96.5-1-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which

denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence indicates that the employer did not have Mr. Brewster sign a separate document regarding his obligation to contact the agency within three working days of the end of an assignment, but instead relied upon a statement of the policy contained in the employer's handbook. The administrative law judge concludes that the employer failed to comply with the requirements of Iowa Code section 96.5(1)(j) and, therefore, that Mr. Brewster was not obligated to contact the agency within three working days. Mr. Brewster's election not to report for further assignments cannot be construed as a voluntary quit. See 871 IAC 24.26(19). Accordingly, Mr. Brewster was eligible for benefits, provided he was otherwise eligible.

The next issue is whether the evidence in the record establishes that Mr. Brewster refused a suitable offer of employment. It does.

871 IAC 24.24(14)(a)(b) provides:

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.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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 evidence in the record establishes that Cambridge Tempositions made several bonafide offers of employment to Mr. Brewster and that Mr. Brewster refused those offers by failing to respond to the employer. The weight of the evidence indicates that the employer did in fact contact Mr. Brewster by telephone and leave messages containing bonafide offers of employment, that Mr. Brewster received the messages, and that Mr. Brewster elected not to respond to the employer, because he was no longer interested in full-time employment. The further employment offered by the employer was reasonably suitable and comparable to the work Mr. Brewster had previously performed for the employer. The offered employment was also within the purview of Mr. Brewster's usual occupation. The evidence further indicates that the positions that were offered to Mr. Brewster were not vacant due to a labor dispute and would not have required Mr. Brewster to join or refrain from joining a labor organization. The wages, hours, or other conditions of the offered work would not have been substantially less favorable to Mr. Brewster than conditions prevailing for similar work in the locality. The administrative law judge concludes that the first refusal was effective January 13, 2006. Effective January 13, Mr. Brewster 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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The evidence in the record establishes that Mr. Brewster has been overpaid \$960.00 in benefits.

DECISION:

The Agency representative's decision dated January 9, 2006, reference 01, is affirmed, but modified as follows. The employer did not comply with the requirements of Iowa Code section 96.5(1)(j). The claimant was not obligated to contact the employer within three working days of the end of an assignment and his election not accept another assignment would not disqualify him for benefits. The claimant's separation from the employment on December 1, 2005, was for good cause attributable to the temporary employment agency, and the claimant was at that time eligible for benefits, provided he was otherwise eligible. The employer's account may be charged for those benefits. On January 13, the claimant refused a suitable offer of employment. Pursuant to Iowa Code section 96.5(3), the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefits amount. The claimant is overpaid \$960.00.

jt/kjw/kjw