

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

NIK D STRAIT
14 CENTURY ST
IOWA CITY IA 52240

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

Appeal Number: 05A-UI-07002-HT
OC: 05/22/05 R: 03
Claimant: Respondent (1)

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(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Cambridge Tempositions, Inc. (Cambridge), filed an appeal from a decision dated June 28, 2005, reference 05. The decision allowed benefits to the claimant, Nik Strait. After due notice was issued, a hearing was held by telephone conference call on July 26, 2005. The claimant participated on his own behalf. The employer participated by Clerical Account Manager Chris Delfoffe.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nik Strait began employment with Cambridge on August 23, 2004. His only assignment with them was for two weeks at Integrated DNA

Technologies. When he submitted his application for employment he specified only clerical jobs because he has a history of lower back problems and his doctor has restricted his work to jobs which do not require heavy lifting. Documentation of this has been presented to Iowa Workforce Development.

On June 3, 2005, Clerical Account Manager Chris Delfoffe contacted the claimant to offer him a job at Millard Refrigeration as a packer. Although the pay was sufficient to meet the requirements of his average weekly wage during his base period, the job would have required heavy lifting which he could not do.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code section 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 did refuse the job offered to him but only because it was beyond his physical capabilities. Under the provisions of 871 IAC 24.24(6), the refusal was for good cause and disqualification may not be imposed.

DECISION:

The representative's decision of June 28, 2005, reference 05, is affirmed. Nik Strait is qualified for benefits provided he is otherwise eligible.

bgh/kjw