

**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**

**ROBERT C MATTSON  
181 - 4<sup>TH</sup> ST  
EVANSDALE IA 50707-2141**

**CNE LTD  
PO BOX 83  
WATERLOO IA 50704-0083**

**Appeal Number: 06A-UI-02972-JTT  
OC: 03/06/06 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1)(j) - Voluntary Leaving – Temporary Employment  
Section 96.5(3)(a) - Refusal of Suitable Work

STATEMENT OF THE CASE:

City & National Employment (CNE) filed a timely appeal from the March 6, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on April 3, 2006. Claimant Robert Mattson participated. Staffing Administrator Shelly Olsson represented the employer. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Mattson was employed through City & National Employment temporary employment agency through January 23, 2006, when he completed his one and only assignment. The employer has a written policy that requires temporary employees to notify CNE within three working days

of the completion of an assignment. On December 6, 2005, Mr. Mattson signed his acknowledgment of the policy. On January 23, Mr. Mattson contacted the temporary employment agency with regards to a new assignment. CNE referred Mr. Mattson for an interview on January 26. Mr. Mattson appeared for the interview, but was not selected by the client business for the assignment. Mr. Mattson checked back with the client business two weeks later to see whether that employer had completed interviews and the employer advised it had not completed interviews. It was at this point that Mr. Mattson established his claim for benefits. A CNE staff member recorded she left a voice message for Mr. Mattson on February 20. A staff member did not provide any specifics in regards to an available work assignment. On March 7, the same staff member left a voice message for Mr. Mattson and again did not provide any specifics with regard to an available work assignment. Mr. Mattson responded to the message the same day and spoke to the staff member who left the message. The CNE staff person advised Mr. Mattson only that CNE had a driving position available with an 8:00 a.m. start time and with a wage somewhere between \$8.00 and \$12.00 per hour. The CNE staff person was unable to say whether the position would be full-time or part-time and provided no other details. Mr. Mattson advised the CNE staff member that he had accepted other employment, would be starting the new job that day, and was therefore not available for a new assignment.

#### REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Mattson separated from the employment for good cause attributable to the temporary employment agency. It does.

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 purpose of the statute is to provide notice to the temporary employment agency that the claimant is available for work at the conclusion of the temporary assignment. The evidence in the record indicates that the employer had a notification policy that complied with Iowa Code Section 96.5(1)(j) and had properly advised Mr. Mattson of his obligation to contact the employer within three working days of the completion of an assignment. The evidence in the record further establishes that Mr. Mattson notified the employer the same day the assignment ended and was referred for an interview that failed to lead to a new assignment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mattson's voluntary separation from the employment was for good cause attributable to the employer. Accordingly, Mr. Mattson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Mattson.

The second question is whether the evidence in the record establishes that Mr. Mattson refused to accept an offer of suitable work. It does not.

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(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.

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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer failed to produce any testimony from the CNE staff person who had contact with Mr. Mattson after his assignment ended on January 23.

The evidence in the record establishes that CNE failed to make a subsequent bona fide offer of employment to Mr. Mattson. CNE had no meaningful discussion with Mr. Mattson on February 20 regarding a new assignment. Regarding the March 7 contact, CNE failed to inform Mr. Mattson of any details of the assignment aside from the fact that it was a driving job, started in the morning, and would pay somewhere in the range of \$8.00 to \$12.00 per hour. Because there was no bona fide offer of a new employment assignment, there was no refusal of suitable work. In addition, even if there had been a bona fide offer, Mr. Mattson's acceptance of other employment would have constituted good cause for refusing a new assignment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mattson did not refuse an offer of suitable employment from CNE. Accordingly, Mr. Mattson is eligible for benefits, provided he is otherwise eligible. CNE's account may be charged for benefits paid to Mr. Mattson. The administrative law judge notes that the employer is not a base period employer and, therefore, has not been charged for benefits disbursed to Mr. Mattson to date.

DECISION:

The Agency representative's March 6, 2006, reference 03, decision is affirmed. The claimant's separation from employment was for good cause attributable to the employer. The claimant had adequate contact with the employer about his availability as required by statute. The claimant did not refuse a suitable offer of employment. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kkf