

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

STANLEY B VONGROVEN  
3800 COUNTY RD W-40  
DECORAH IA 52001

C E CONTRACTING LTD OF IOWA  
PO BOX 497  
HAMPTON IA 50441-0497

Appeal Number: 04A-UI-01686-CT  
OC: 01/04/04 R: 04  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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(3)a – Refusal of Work

STATEMENT OF THE CASE:

Stanley Vongroven filed an appeal from a representative's decision dated February 9, 2004, reference 01, which denied benefits on a finding that he had refused recall to suitable work. After due notice was issued, a hearing was held by telephone on March 9, 2004. Mr. Vongroven participated personally. The employer participated by Lynn Baker, Office Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Vongroven began working for C E Contracting Ltd. of Iowa in October of 2002. He and his wife were both employed as full-time, seasonal laborers. The two always worked at the same job site.

On September 5, 2003, Mr. Vongroven and his wife were laid off after they completed work on a project in Jones County, Iowa. They were told they would be contacted when further work was available. The employer contacted Mrs. Vongroven on September 11 and recalled her and her husband to work on a project in Kansas. She indicated they would not be able to accept the work because they had personal, legal matters to attend to in Iowa. She did not indicate that they would be able to report for work at some later date. The employer would have considered altering their start date if there had been an offer to start later. Because they declined recall, the employer replaced them. There would have been approximately three weeks of work for Mr. Vongroven if he had accepted recall.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed regarding Mr. Vongroven's refusal of recall. An individual who refuses an offer of suitable work or recall to suitable work is disqualified from receiving job insurance benefits. Iowa Code Section 96.5(3)a. Mr. Vongroven declined recall because he and his wife had appointments necessary to taking care of her mother's estate. As such, they were not available for work. Before a disqualification may be imposed, the evidence must establish that the individual was available for work within the meaning of the law. Because Mr. Vongroven was not available for work, it is concluded that he had good cause for refusing recall. As such, no disqualification may be imposed for the refusal. See 871 IAC 24.24(4).

Mr. Vongroven did not have a claim for job insurance benefits in effect at the time he refused recall to work. Therefore, his failure to be available on September 11, 2003 does not effect his entitlement to benefits on his claim filed effective January 4, 2004.

#### DECISION:

The representative's decision dated February 9, 2004, reference 01, is hereby reversed. Mr. Vongroven had good cause for refusing recall as he was not available for work within the meaning of the law. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b