

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIO ARCE MARTINEZ**  
Claimant

**APPEAL NO: 10A-UI-01313-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAMBRIDGE TEMPOSITIONS INC**  
Employer

**OC: 04-19-09**  
**Claimant: Appellant (1)**

Section 96.5(1)j – Voluntary Leaving (Temporary Assignment)  
Section 96.5-3-a – Work Refusal  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 13, 2010, reference 06, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 9, 2010. The claimant participated in the hearing with Interpreter Giovanna Carnet. Anna Martinez, Branch Manager, participated in the hearing on behalf of the employer. The issue of whether the claimant refused a suitable offer of work was not included on the hearing notice. Both parties agreed to waive notice of that issue.

**ISSUE:**

The issues are whether the claimant voluntarily left his employment for good cause attributable to the employer, whether the claimant sought reassignment from the employer, and whether the claimant refused a suitable offer of work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on January 13, 2010. The claimant never received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 23, 2010. That date fell on a Saturday so the appeal was due January 25, 2010. When the claimant did not receive the representative's decision he went to his local office January 26, 2009, and asked for the decision. After receiving it at the local office he immediately filed an appeal and asked the local office to fax it to the Appeals Section. Under these circumstances the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed with Cambridge Tempositions assigned to Syngenta Seeds as a full-time second shift general laborer from September 11, 2009 to October 12, 2009. The employer held a meeting October 12, 2009, and notified half of the 150 employees they were being laid off and the claimant was one of the 75 employees in the lay-off group. The employer's availability statement requires that employees call in to report their availability within

three days of the completion of an assignment. The application says employees need to maintain weekly contact with the employer after notifying it of the completion of the assignment if he wants the employer to continue looking for work for him. Both documents were given to the claimant in Spanish. On October 14, 2009, the employer called the claimant and asked him to return to work at Syngenta under the same terms and conditions at 4:00 p.m. that day. The assignment was expected to last until November 19, 2009. The claimant accepted the assignment but did not call or show up for work October 14, 15 or 16, 2009, and the employer considered him to have voluntarily quit by failing to call or show up for work for three consecutively scheduled workdays. The employer had no further contact with the claimant until February 10, 2010, when it called and offered him an assignment waving cars in to have their taxes done at Liberty Tax Service, full or part time, any hours between 9:00 a.m. and 9:00 p.m., six days per week, earning \$8.50 per hour. The claimant laughed and said he would call the employer back later but never did so. The employer has no record of the claimant calling in before or after that date.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant refused a suitable offer of work and did not seek reassignment from the employer.

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.

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.

The claimant was laid off from Syngenta Seeds October 12, 2009, but was called back to work October 14, 2009. He told the employer he accepted the job offer but then was a three-day no-call no-show. Because the claimant was laid off November 12, 2009, the administrative law judge views this situation as a new offer of work to the claimant. The claimant filed a claim for benefits effective April 19, 2009. The employer offered him the exact same job with the same hours, wages and duties as he was working two days earlier at Syngenta but he effectively refused the offer by failing to show up or call the employer to state he would not be in when he

said he would. The job offer also met the minimum wage requirements of 65 percent of his average weekly wage of \$306.00 because it paid \$8.75 per hour for \$350.00 per week. Additionally, the claimant failed to seek reassignment from the employer or check in on a weekly basis as he agreed to do when he applied for work. The purpose of Iowa Code section 96.5(1)j is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. In this case, the claimant gave the employer no notice of his availability after stating he would accept the offer of work October 14, 2009. Consequently, the claimant refused a suitable offer of work and quit his job by failing to maintain contact with the employer after his layoff and work refusal. Therefore, benefits are denied.

**DECISION:**

The January 13, 2010, reference 06, decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs