

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

CYNTHIA L ETERNICKA  
1928 – 270<sup>TH</sup> ST  
MILFORD IA 51351

GENTIVA CERTIFIED HEALTHCARE CORP  
C/o BARNETT ASSOCIATES NIC  
PO BOX 7340  
GARDEN CITY NY 11530-0725

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Appeal Number: 05A-UI-06690-JTT  
OC: 05/01/05 R: 01  
Claimant: Respondent (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, 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(3)(A) – Refusal of Suitable Work  
871 IAC 24.24(14) – Employment Offer From Former Employer  
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Gentiva Certified Healthcare filed a timely appeal from the June 15, 2005, reference 02, decision that allowed benefits and determined that the claimant had not refused suitable work. After due notice was issued, a hearing was held on July 14, 2005. Cynthia Eternicka participated. Attorney Bob Pratt represented the employer and presented testimony through Manager of Clinical Practice Cindy Northey. The administrative law judge took official notice of the Agency administrative file.

## FINDINGS OF FACT:

Cynthia Eternicka, L.P.N., was employed by Gentiva Certified Healthcare as a part-time home care coordinator until May 2, 2005, when Branch Manager Robin Lock laid her off due to the elimination of the position. On Friday, April 29, 2005, Branch Manager Robin Lock telephoned Ms. Eternicka and summoned her to a meeting on Monday, May 2. At the meeting, Ms. Eternicka learned that her recently created position of Home Care Coordinator was being eliminated, due to a lack of client referrals being generated.

As a part-time home care coordinator, Ms. Eternicka worked 10-20 hours per week and set her own schedule. Ms. Eternicka earned \$13.50 per hour. Ms. Eternicka worked out of the employer's Spirit Lake office, but also worked from her home and traveled into the community to meet with clients or referring agencies. Ms. Eternicka served Emmet, Dickinson, and Clay counties in Iowa and Martin and Jackson counties in Minnesota.

During her employment in the home care coordinator position, Ms. Eternicka also worked for the employer as a nurse's aide in Spencer, earned \$10.00 per hour, and worked day, evening and overnight hours. At the beginning of April, Ms. Eternicka advised the employer she no longer wanted to work evening or overnight hours.

During the meeting on May 2, the employer offered Ms. Eternicka work as an L.P.N. and as a home health care aide. The L.P.N. work would have been for a client in Martin County, Minnesota and would have paid \$15.00 per hour. The client was one with whom Ms. Eternicka had worked approximately two hours per week as the home care coordinator. Ms. Eternicka did not want to provide direct care nursing services to that client because of the family dynamics involved. Ms. Eternicka would need to renew her C.P.R. certification, but that could be done through a one-evening course. The home health care aide work would have been in Spencer and would have been the same nurse's aide work with the same pay that Ms. Eternicka had previously performed. The new work would have allowed Ms. Eternicka to work approximately the same number of hours. The new work would have allowed Ms. Eternicka somewhat less flexibility in setting her schedule. Ms. Eternicka was aware of the proposed hours and days of the new employment.

Ms. Eternicka advised the employer she would need to think about the offer of further employment and discuss the matter with her husband. Ms. Eternicka advised the employer that she had other things she was thinking about trying. Ms. Eternicka was interested in locating another administrative position, rather than a position in which she would be providing direct care. Ms. Eternicka decided to pursue other part-time nursing positions, as well as positions in sales and marketing. On May 4, Ms. Eternicka advised the employer that she was not interested in the offer of employment.

In rejecting the employer's offer of further employment, Ms. Eternicka was concerned, in part, about the amount of stress inherent in the work being offered by the employer. Approximately one year before, Ms. Eternicka had been diagnosed with atrial fibrillation, which was controlled through medication. At the time Ms. Eternicka was diagnosed, she was working for the employer as a full-time care team coordinator, or scheduler. Ms. Eternicka and her doctors were concerned the stress of that position was negatively impacting Ms. Eternicka's health, and Ms. Eternicka left that position as a result.

Ms. Eternicka established a claim for benefits that was effective May 1, 2005 and has received benefits to date totaling \$3,098.00.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Eternicka refused to accept an offer of suitable work from her former employer.

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 Gentiva Certified Health Care made a bonafide offer of employment to Ms. Eternicka and that Ms. Eternicka rejected the offer. The further employment offered by the employer was reasonably suitable and comparable to the work Ms. Eternicka had previously performed for the employer. The offered employment was also within the purview of Ms. Eternicka's usual occupation. The evidence further indicates that the positions that were offered to Ms. Eternicka were not vacant due to a labor dispute and would not have required Ms. Eternicka 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 Ms. Eternicka than conditions prevailing for similar work in the locality.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Eternicka refused an offer of suitable employment from Gentiva Certified Healthcare. Accordingly, Ms. Eternicka is disqualified for benefits until she has worked in and been paid for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to Ms. Eternicka.

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 \$3,098.00 in benefits Ms. Eternicka has received constitutes an overpayment that Ms. Eternicka will have to repay.

DECISION:

The Agency representative's decision dated June 15, 2005, reference 02, is reversed. The claimant refused an offer of suitable employment from her former employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant. The claimant is overpaid \$3,098.00.

jt/pjs