

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

AMANDA J LYNCH
3908 LENNOX AVE NE
CEDAR RAPIDS IA 52402

CONTINUUM HEALTHCARE PERSONNEL
SERVICES INC
PO BOX 515
ANKENY IA 50021

AMENDED
Appeal Number: 04A-UI-06664-CT
OC: 05/09/04 R: 03
Claimant: Respondent (3)

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 96.4(3) – Able and Available
Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

Continuum Healthcare Personnel Services, Inc. (Continuum) filed an appeal from a representative's decision dated June 10, 2004, reference 03, which held that no disqualification would be imposed regarding Amanda Lynch's May 9, 2004 refusal of work. After due notice was issued, a hearing was held by telephone on July 12, 2004. Ms. Lynch participated personally. The employer participated by Laurie Frost, Comptroller/Human Resources Manager; Kandace Karger, Assistant Human Resources Manager; and Katy Parker, Cedar Rapids Regional Manager. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Lynch's last period of employment with Continuum, a temporary placement agency, began on May 13, 2004. Employees are not guaranteed any minimum number of hours per week and are free to decline assignments. Employees are given a minimum of two hours in which to report for an accepted assignment even if the shift's starting time is sooner.

Ms. Lynch declined a work shift at Pleasant View on May 14. During the week ending May 22, several messages were left for her regarding available shifts. She declined work on May 17 and May 20 because she felt the offers were made at the last minute and she would not have time to arrange childcare. She declined work on May 19 because she was with her daughter at the dentist's office. She declined work on May 21. She indicated that she was working elsewhere but there were no wages reported on her claim for the week ending May 22. Ms. Lynch also declined work on June 1 because she would have to arrange childcare at the last minute.

During the week ending June 5, Ms. Lynch declined work on two occasions and accepted work on other occasions. At least three of the shifts she accepted were cancelled. During the week ending June 12, she accepted at least two of the four shifts offered that week. Ms. Lynch did not accept offered work on June 13 and 15 because she was working elsewhere. She was not able to work from June 17 through 19 because she had a medical excuse. Ms. Lynch did not accept any of the several shifts offered during the week ending June 26 because she was either working elsewhere or did not have time to arrange childcare. She did not decline any shifts after June 26.

Ms. Lynch received job insurance benefits in the amount of \$311.00 for the week ending May 22; \$138.00 for the week ending June 19; and \$248.00 for the week ending June 26, 2004,

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed regarding Ms. Lynch's refusal of work shifts. Before a work-refusal disqualification may be imposed, the evidence must establish that the individual was available for work within the meaning of Iowa Code Section 96.4(3). See 871 IAC 24.24(4). The administrative law judge concludes that Ms. Lynch was not available for work during the weeks ending May 22 and June 26, 2004 because of lack of childcare or the fact that she was working elsewhere. Ms. Lynch knew that the employer would, more likely than not, offer her work to fill in for individuals who had just called off that day. Therefore, she knew that she might not be advised of the availability of work until the day of the shift. Knowing the nature of the employer's business, it was her responsibility to have a plan for how she would handle childcare under such circumstances. Ms. Lynch was not available the week ending June 19 because of other employment and medical problems.

Because she was not available for work during the three weeks cited above, Ms. Lynch was not entitled to job insurance benefits for those three weeks. Therefore, she has been overpaid \$697.00 in job insurance benefits for the weeks ending May 22, June 19, and June 26, 2004.

There were weeks other than the three referenced above during which Ms. Lynch declined available shifts. An individual who is hired for placement in temporary work assignments is not required to continue accepting temporary assignments. See 871 IAC 24.26(19). However, when work is declined, it becomes an issue of refusing work. No disqualification is imposed for a work refusal unless the work offered was suitable work within the meaning of the law. See Iowa Code Section 96.5(3)a. In order to be considered suitable work, the job assignments would have to pay the requisite wages as specified by the statute. The evidence does not establish that Ms. Lynch declined work, which would have paid at least \$803.51 during the first five weeks she was unemployed after filing her claim effective May 9, 2004. The evidence does not establish that she declined work, which would have paid at least \$602.63 during the fifth through twelfth week of unemployment. Moreover, there must be an offer of work made personally and there must be a definite refusal. A failure to return phone calls timely does not, in and of itself, constitute a job refusal. For the above reasons, the administrative law judge concludes that no disqualification is imposed other than for the three weeks previously identified herein.

DECISION:

The representative's decision dated June 10, 2004, reference 03, is hereby modified. Ms. Lynch is denied job insurance benefits for the weeks ending May 22, June 19, and June 26, 2004 as she was not available for work within the meaning of the law. Benefits are otherwise allowed, provided she satisfies all other conditions of eligibility. Ms. Lynch has been overpaid \$697.00 in job insurance benefits.

cfc/kjf