

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEANIE C LOWE
Claimant

APPEAL NO. 16A-UCFE-00031-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COGNIZANT TECHNOLOGY SOLUTIONS
Employer

OC: 04/24/16
Claimant: Appellant (2)

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Jeanie Lowe (claimant) appealed a representative's September 26, 2016, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she refused suitable work with Cognizant Technology Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 27, 2016. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On July 11, 2016, the claimant went to the Agency and was given a job sheet to apply for a position with the employer as a dayshift customer service representative. On July 19, 2016, the employer interviewed the claimant for a job with afternoon/evening hours. No starting date for the work was given and no testing was administered. The claimant refused that job because she had worked daytime hours for more than thirty-six years. She and her husband share a car to get to work. The claimant reported on her weekly claim that she refused work. The Agency found her to be ineligible to receive unemployment insurance benefits. The Agency issued a representative's decision dated August 4, 2016, reference 01, finding the claimant not eligible to receive unemployment insurance benefits because she refused an offer of suitable work with the employer. The employer was not listed as a party on the decision. The claimant's average weekly wage is \$557.34 and the offer was made in her 13th week of unemployment.

On August 5, 2016, the Agency told the claimant that the claimant improperly reported it as a work refusal because the employer did not offer daytime work. The Agency told the claimant to appeal the representative's decision dated August 4, 2016, reference 01. The claimant appealed the decision. In a decision dated September 2, 2016, Administrative Law Judge

Teresa Hillary reversed the representative's decision and found the claimant did not refuse suitable work. Later, the Agency entered a representative's decision dated September 8, 2016, reference 02, declaring the representative's decision dated August 4, 2016, reference 01, null and void because the employer was not listed as a party and was not aware of the decision.

On September 20, 2016, a fact-finding interview was scheduled to be held with due notice to the parties. The fact finding called the employer for the interview but the employer did not answer the telephone. The claimant had issues communicating with the fact finder. The fact finder issued a September 26, 2016, decision, reference 03, that concluded the claimant refused suitable work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not refuse an offer of suitable work.

Iowa Code § 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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The claimant went to an interview for a job with daytime hours and the the employer interviewed her for a job with afternoon/evening hours. The claimant would not have interviewed for the position had she known what the employer was doing. A worker who can work daytime hours is not unavailable for work. The claimant worked daytime hours for thirty-six years. The offer was unsuitable for the claimant. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The representative's September 26, 2016, decision (reference 03) is reversed. The claimant did not refuse suitable work. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs