

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANNE M QUINLAN

Claimant

APPEAL NO. 19A-UI-03619-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TODAY PUBLICATIONS LLC

Employer

OC: 04/07/19

Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Today Publications (employer) appealed a representative's April 29, 2019, decision (reference 02) that concluded Anne Quinlan (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 21, 2019. The claimant participated personally. The employer was represented by Monty Fisher, Attorney at Law, and participated by Kelly Harrison, Operation Manager, and Dean Chada, Owner. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 22, 2018, as a full-time telephone sales representative. When she was hired, the employer paid her a base weekly wage of \$320.00 plus commission. Later, the employer paid her a base weekly wage of \$250.00 plus commission. She performed work for the employer through November 16, 2018. On November 19, 2018, the operation manager ended her employment because she did not make enough sales. There was enough work as the company was continuing to hire new employees.

On January 7, 2018, the operation manager talked with the claimant on the telephone about the company being busy. The operation manager asked the claimant if she would like a position. The claimant said she had been called into jury duty. The operation manager told the claimant to let her know when it was done. The operation manager did not mention a starting date or wage.

On January 25, 2018, the operation manager and the claimant exchanged Facebook messages. The operation manager told the claimant she was hiring the next week and she needed "to know today one way or another". The claimant said she was on jury duty until after February 1,

2018. The operation manager did not mention a starting date or wage. The claimant could work while waiting to be called for jury duty.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she was able and available for work until April 28, 2019. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant filed for unemployment insurance benefits with an effective date April 7, 2019. She received benefits through the week ending April 27, 2019. She started working for Days Inn in Fort Dodge, Iowa, as of April 30, 2019. The claimant is disqualified from receiving unemployment insurance benefits as of April 28, 2019, because she was not available for other work.

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

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 work was offered within seven and nine weeks of the claimant's unemployment and was required to provide the claimant wages seventy-five percent of those paid to the claimant during the highest quarter of her base period. The evidence fails to establish that the claimant would have received at least seventy-five percent of her average weekly wages during her highest quarter of earnings because the employer did not tell the claimant what her wage would be. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits through April 27, 2019.

DECISION:

The representative's April 29, 2019, decision (reference 02) is affirmed. The claimant was able and available for work through April 27, 2019. She did not refuse an offer of suitable work. Benefits are allowed through April 27, 2019, so long as the claimant is otherwise qualified.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs