

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMINGA GALLEGOS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 17A-UI-12570-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/11/16
Claimant: APPELLANT (2)**

Iowa Code §96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 1, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2018. Claimant participated along with her husband and witness Daniel Gallegos. Claimant and her witness participated with the assistance of Language Link Spanish Interpreter Alex identification number 11184. Claimant was represented by Megan Norberg, attorney at law. Employer participated through Melissa Lewien, Risk Management Manager. Claimant's Exhibits A and B were entered into the record. Employer's Exhibits 1 through 3 were entered into the record.

ISSUE:

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was offered another job assignment after she completed her assignment at Syngenta on October 27, 2017. The claimant has two residences, one in San Juan, Texas and another in Cambridge, Iowa. She and her husband rent a trailer year round in Cambridge, Iowa and have done so for the last five years. They have suitable housing available for year round work. For the last nineteen years the claimant has returned to Iowa to work for Advance Services at the Syngenta plant each time she was asked to do so. In 2008, she and her husband worked an additional assignment that was at a location other than the Syngenta plant.

The job offered to claimant by Martha on October 27 and October 30, was not suitable as it was located over sixty miles away from the Cambridge trailer where the claimant lived. The type of work may have been suitable, as was the pay, but the one-way distance alone makes the job unsuitable. The claimant was not required to move to a new location closer to the job offered by Advance Services.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of 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 offer was unsuitable, as it was simply too far away from the claimant's Iowa residence. The claimant would have been required to drive more than sixty miles one way to work at the job. The claimant was not required to move closer to the job in order to make it a suitable offer.

The claimant has worked other jobs besides Syngenta indicating she is not holding herself available for only one employer. Additionally, she has two residences and has always returned to a suitable offer of work when called to do so. The claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 1, 2017, (reference 02), decision is reversed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs