

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

ROXANNE R FOX  
408 S 5<sup>TH</sup> ST  
GRIMES IA 50111

ADECCO USA INC  
C/O FRICK UC EXPRESS  
PO BOX 66736  
ST LOUIS MO 63166-6736

Appeal Number: 05O-UI-03607-S2T  
OC: 08/15/04 R: 02  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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 to Accept Suitable Work

STATEMENT OF THE CASE:

Adecco USA (employer) appealed a representative's January 5, 2005 decision (reference 02) that concluded Roxanne Fox (claimant) was eligible to receive unemployment insurance benefits. A hearing was held on April 27, 2005, following due notice pursuant to Remand Order of the Employment Appeal Board dated March 31, 2005. The claimant participated personally. The employer was represented by Cris Scheibe, Hearings Representative, and participated by Liz Courtney, Office Supervisor.

#### 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 March 29, 2004, as a full-time temporary customer service representative working for \$10.00 per hour. The claimant previously worked for Pioneer High Bred for eight years as an administrative assistant earning \$40,000.00 per year.

The claimant filed for unemployment insurance benefits with an effective date of August 15, 2005. Her average weekly wages were determined to be \$999.99.

On November 17, 2004, the employer offered the claimant a position as a customer service representative earning \$11.00 per hour. The claimant refused the position in her 14th week of unemployment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant failed to accept an offer of suitable work. For the following reasons the administrative law judge concludes she did not.

Iowa Code section 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. 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:

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

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

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

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

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

Where the work offered does not equal the statutorily prescribed percentage of base period wages, the work is unsuitable as a matter of law. Biltmore Enterprises, Inc. v. Iowa Department of Job Service, 334 N.W.2d 284 (Iowa 1983). The work was offered within 14 weeks of the claimant's unemployment and was required to provide the claimant wages of 70 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 70 percent of her average weekly wages during her high quarter of earnings. 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.

#### DECISION:

The representative's January 5, 2005 decision (reference 02) is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

bas/pjs