

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRACIELA ANGUIANO

Claimant

APPEAL NO. 07A-UI-10876-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC

Employer

**OC: 07/08/07 R: 04
Claimant: Appellant (2-R)**

Iowa Code section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Graciela Anguiano filed a timely appeal from the November 14, 2007, reference 04, decision that denied benefits and that concluded she had refused a suitable offer of employment on October 23, 2007. After due notice was issued, a hearing was held on December 11, 2007. Will Ortega, Account Manager, represented the employer. Claimant Graciela Anguiano did not participate. Ms. Anguiano provided a telephone number for the hearing, but was not available at the number at the scheduled time of the hearing. The number the claimant provided was the number for the Muscatine Workforce Development Center. At the scheduled start of the hearing, the Muscatine Workforce Development staff confirmed that the claimant was not at their facility. At the claimant's request, the Appeals Section had secured a Spanish-English interpreter to assist with the hearing. The administrative law judge took official notice of the Agency's record of the claimant's base period wages.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Graciela Anguiano established an "additional claim" for benefits that was effective October 14, 2007. The "additional claim" was based on a July 8, 2007 original claim date. Ms. Anguiano's highest earnings base period quarter was the first quarter of 2007, during which Ms. Anguiano's average weekly earnings were \$459.00. Seventy-Five percent of \$459.00 is \$344.00 (\$344.25 rounded to the nearest dollar).

On August 27, 2007, Ms. Anguiano commenced her most recent period of employment with Cambridge Tempositions. Ms. Anguiano completed a full-time assignment at Syngenta Seeds that started on August 27, 2007 and ended on September 24, 2007. The assignment paid \$8.75 per hour plus a 25 cent hourly bonus for good attendance. The Syngenta Seeds assignment was located in Lone Tree. At all relevant times, Ms. Anguiano resided in Muscatine. The distance from Muscatine to Lone Tree is 19.75 miles.

On October 23, 2007, Cambridge Tempositions Accounts Manager Will Ortega spoke with Ms. Anguiano about a new assignment. The new assignment would be a full-time, first-shift laundry

position at the University of Iowa. Ms. Anguiano would report to a facility in Coralville. The assignment would pay \$8.75 per hour. This amounted to \$350.00 per week. The distance from Muscatine to the Coralville assignment was 45 miles. Ms. Anguiano indicated a willingness to perform the work, but indicated that she lacked transportation to the assignment. Ms. Anguiano inquired as to whether there was a second opening at the University of Iowa facility for her friend. Ms. Anguiano indicated that if there was a second opening available for her friend, she would be able to ride to the assignment with the friend. There was not a second opening. Ms. Anguiano refused the offered assignment due to lack of transportation.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(10) provides as follows:

Distance to new job. Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

The weight of the evidence in the record establishes that Cambridge Tempositions made a bona fide offer of employment to Ms. Anguiano on October 23, 2007. The weight of the evidence does not support a conclusion that Ms. Anguiano declined the employment due to the offered wage. The weight of the evidence indicates that the distance from Ms. Anguiano's home in Muscatine to the new assignment in Coralville prevented the offered assignment from being suitable employment under the provisions of Iowa Code section 96.5(3)(a). Thus, there was no refusal of suitable employment and no disqualification will enter. Ms. Anguiano is eligible for benefits, provided she is otherwise eligible.

Ms. Anguiano's failure to participate in the hearing, and the evidence presented at the hearing, calls into question whether Ms. Anguiano meets the work availability requirements of Iowa Code section 96.4(3). The evidence presented at the appeal hearing was insufficient for such a determination. This matter will be remanded to a claims representative so that Ms. Anguiano's work availability may be assessed.

DECISION:

The Agency representative's decision dated November 14, 2007, reference 04, is reversed. The claimant did not refuse an offer of suitable employment from Cambridge Tempositions on October 23, 2007. The claimant is eligible for benefits, provided she is otherwise eligible. This matter is remanded to a claims representative so that Ms. Anguiano's work availability may be assessed.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw