

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

<p>MO I OSMAN Claimant</p> <p>EXPRESS SERVICES INC Employer</p>	<p>68-0157 (9-06) - 3091078 - EI</p> <p>APPEAL NO. 06A-UI-10112-LT</p> <p>ADMINISTRATIVE LAW JUDGE DECISION</p> <p>OC: 09-17-06 R: 02 Claimant: Appellant (2R)</p>
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Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 13, 2006, reference 05, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 31, 2006. Claimant participated. Employer participated through B. J. Butler.

ISSUE:

The issue is whether claimant refused a suitable offer of work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Butler contacted claimant via telephone on September 7, 2005 when he offered him work as a truck driver (class A driver's license, which claimant had) at Merchant's Metal making \$14.00 per hour for approximately 30 hours per week (\$420 per week gross wages) for an open-ended period of time. Claimant's average weekly wage was \$548.67. The offer was made in the first week of unemployment. He accepted the position, which was set to begin on September 8, 2005 but was a no-call/no-show that morning and there was no other communication documented until about a year later so he is considered to have quit the employment with Express on September 8, 2005. There is no evidence of requalification.

While the offer of and refusal of work has been adjudicated, the separation from employment with Express Services Inc. on September 8, 2005 (according to claimant's sworn testimony in this hearing, he quit Express to look for full-time work but had not yet found the employment with Nukolls Concrete) has not yet been determined. The administrative record also shows \$686.00 in gross wages with Nuckolls Concrete in the same quarter but after his separation from Express while being paid benefits, but the administrative record does not reflect that he reported any of those subsequent wages. Nor has that issue been addressed at the fact-finding level.

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 § 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.

The offer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. Benefits are allowed.

DECISION:

The October 13, 2006, reference 05, decision is reversed. The offer of work claimant accepted on September 7, 2005 was not suitable. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The September 8, 2006 separation and failure to report wage issues delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/cs