

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH P REILLY
Claimant

APPEAL NO. 15A-UI-02498-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C2C INC
Employer

OC: 01/25/15
Claimant: Respondent (4)

Iowa Code Section 96.5(3) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 18, 2015, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible based on an Agency conclusion that he claimant had refused unsuitable work on February 5, 2015. After due notice was issued, a hearing was held on March 30, 2015. Claimant Josh Reilly did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Brad Cummings represented the employer and presented additional testimony through Callin Cummings. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-02497-JTT. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and of wages reported by or for the claimant (DBRO, WAGE-A and WAGE-B).

ISSUES:

Whether the claimant refused suitable work on or about February 5, 2015 without good cause.

Whether the claimant has been able to work and available for work since he established his claim for benefits through the benefit week that ended March 28, 2015.

Whether the claimant has been overpaid benefits.

Whether the employer's C2C, Inc., account (employer account number 526845), may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brad Cummings and his son, Callin Cummings, conduct business through three different corporate entities: C2C Express, Inc. (employer account number 521172), C3C, Inc. (employer account number 526410) and C2C, Inc. (employer account number 526845). C2C, Inc., the employer account at issue in the present case, is a grain hauling enterprise. The other two corporate entities have contracts with FedEx to haul freight for FedEx. Because Josh Reilly performed commercial truck driving work for all three corporate entities, it is somewhat difficult to get one's

head around the particulars of the three employments. Because the February 18, 2015, reference 03, decision regarding whether there was a refusal of suitable work on or about February 5, 2015, referenced only C2C, Inc., it is important to focus on that employer entity when addressing the employer's appeal from the reference 03 decision. The reference 03 decision did not address whether there had been a refusal of suitable work offered by one of the employer's FedEx related enterprises and it would not be appropriate to expand the present decision to cover a refusal of work with one of those other entities, since neither the claimant nor the employer received notice of a work refusal issue concerning one of those other entities.

The employer has reported quarterly wages for Mr. Reilly under all three entities as follows:

Account Name (Number)	Year/Quarter	Wages Reported by Employer
C2C Express, Inc. (521172)	2013/3	376.90
C3C, Inc. (526410)	2013/3	70.00
C2C, Inc. (526845)	2013/3	1,490.96
C2C Express, Inc. (521172)	2013/4	1,500.00
C3C, Inc. (526410)	2013/4	2,833.00
C2C, Inc. (526845)	2013/4	225.38
C2C Express, Inc. (521172)	2014/1	1,655.00
C3C, Inc. (526410)	2014/1	2,457.40
C3C, Inc. (526410)	2014/2	1,527.40
C3C, Inc. (526410)	2014/3	164.00
C2C, Inc. (526845)	2014/3	536.63
C2C Express, Inc. (521172)	2014/4	1,270.00
C2C Express, Inc. (521172)	2015/1	350.00

Mr. Reilly began his employment relationship with the Cummings during the third quarter of 2013 and started by hauling grain for C2C, Inc. In about September 2013, Mr. Reilly began hauling FedEx freight for the Cummings' two other corporate enterprises. Mr. Reilly performed part-time grain hauling work for C2C, Inc., during the day and performed part-time, on-call overnight work for the other two corporate entities. The daytime grain hauling work for C2C, Inc., paid a flat rate. The night-time FedEx work paid 38 cents per mile. The Cummings try to ensure that their drivers make at least the equivalent of \$20.00 per hour. Mr. Reilly did not care for the overnight FedEx work, but continued to perform both the C2C, Inc., daytime grain hauling work and the overnight FedEx work for an extended period. The employer's quarterly wage reports to Workforce Development indicate that Mr. Reilly last performed the C2C, Inc., grain hauling work during the third quarter of 2014.

Mr. Reilly established a claim for unemployment insurance benefits that was effective January 23, 2015. For the period of January 23, 2015 through March 28, 2015, Mr. Reilly reported wages and received benefits as follows:

Benefit Week End Date	Wages Reported	Benefits Paid
01/31/15	0.00	198.00
02/07/15	0.00	198.00
02/14/15	0.00	198.00
02/21/15	0.00	198.00
02/28/15	0.00	198.00
03/07/15	0.00	198.00
03/14/15	0.00	198.00
03/21/15	0.00	198.00
03/28/15	0.00	198.00

Mr. Reilly received \$1,782.00 in benefits for the above-referenced nine-week period.

C2C, Inc., the employer in interest in this matter, has not offered Mr. Reilly any grain hauling work from the time Mr. Reilly established his claim for benefits through the benefit week that ended March 28, 2015. The administrative law judge uses that cut-off date because that was the last full week before the March 30, 2015 appeal hearing date.

However, since Mr. Reilly filed his claim for benefits, the Cummings have been in contact with Mr. Reilly regarding work available with the employer's other two FedEx related corporate entities. As of the March 30, 2015 appeal hearing, Mr. Reilly had not performed work for any of the Cummings' businesses since establishing his claim for benefits. At a fact-finding interview on or about February 9, 2015, Mr. Reilly asserted that he had night blindness. The Cummings followed up with Mr. Reilly afterward Mr. Reilly conceded that he did not in fact suffer from night blindness.

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.

Iowa Code section 96.5(3)b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The weight of the evidence in the record establishes that the named employer in interest, C2C, Inc., did not offer any work to Mr. Reilly during from the time the claim for benefits was effective on January 25, 2015, through the benefit week that ended March 28, 2015. Accordingly, there would be no basis for disqualifying Mr. Reilly for benefits in connection with an alleged offer and refusal of work from the named employer in interest, C2C, Inc.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Mr. Reilly did not appear for the appeal hearing on March 30, 2015 and did not present any evidence to meet his burden of proving that he was able to work and available for work from the time he established his claim for benefits effective January 25, 2015 through the benefit week that ended March 28, 2015. Accordingly, Mr. Reilly is not eligible for benefits for that nine-week period.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for benefits, the claimant must repay the benefits and Workforce Development must recover the benefits even if the claimant was not at fault in receiving the benefits. Because this decision disqualified Mr. Reilly for benefits effective January 25, 2015, through the benefit week that ended March 28, 2015, based on a conclusion that Mr. Reilly did not demonstrate that he was able and available for work during that period, the \$1,782.00 in benefits that Mr. Reilly received for that nine-week period constitutes an overpayment of benefits. Mr. Reilly must repay that amount.

DECISION:

The February 18, 2015, reference 03, is modified as follows. Employer C2C, Inc., did not offer work to the claimant during the period of January 25, 2015 through March 28, 2015. Therefore, there was not disqualifying work refusal concerning that named employer in interest during that period. The claimant failed to demonstrate that he was able to work and available for work during the period of January 25, 2015 through March 28, 2015 and, therefore is not eligible for

benefits for that period. Based on the availability disqualification, the claimant is overpaid \$1,782.00 for the nine-week period of January 25, 2015 through March 28, 2015. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css