

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GORDON PLUMMER
Claimant

APPEAL NO. 14A-UI-03765-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 03/09/14
Claimant: Respondent (4)

Iowa Code § 96.4-3 - Availability for Work
Iowa Code § 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Express Services, Inc. (employer) appealed an unemployment insurance decision dated April 1, 2014, (reference 02), which held that Gordon Plummer (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jim Cole, Staffing Consultant. This case was held simultaneously with appeal number 14A-UI-03764-BT.

ISSUE:

The issue is whether the claimant is able and available, and if so, whether he refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer offered the claimant an assignment at the UNI Sports Uni-Dome to help set up for a concert and the claimant accepted. The assignment was scheduled to begin on March 3, 2014, but the claimant was a no-call/no-show. He did not call or check in with the employer within three days and was considered to have voluntarily quit effective March 6, 2014. The claimant did contact the employer on March 10, 2014, and stated he had been out of town.

The claimant filed a claim for unemployment insurance benefits effective April 1, 2014, and has received benefits after the separation from employment in the amount of \$906.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified for unemployment compensation benefits if he refused a suitable offer of work without good cause. To be suitable, an offer of work must pay wages that are

100 percent of the claimant's average weekly wages in his highest quarter when work is offered during the first five weeks of unemployment. See Iowa Code § 96.5-3-a. Additionally, both the job offer and the job refusal must occur within the claimant's benefit year before disqualification can be imposed. 871 IAC 24.24(8).

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The employer offered the claimant a job assignment on March 3, 2014, and he accepted. However, he failed to call and failed to report to work. The claimant did not contact the employer until March 10, 2014, when he reported he was out of town. Consequently, he is not disqualified for refusing an offer of work but is disqualified for his failure to meet the availability requirements of the law.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. The claimant is overpaid benefits in the amount of \$906.00.

DECISION:

The unemployment insurance decision dated April 1, 2014, (reference 02), is modified in favor of the appellant. The claimant does not meet the availability requirements of the law and benefits are denied. He was also disqualified in appeal number 14A-UI-03764-BT. The claimant is overpaid a total amount of \$906.00 in unemployment benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css