

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER M THOMPSON**  
Claimant

**APPEAL NO. 08A-UI-06068-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 04/13/08 R: 02  
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available For Work  
Section 96.5-3-a – Refusal to Accept Suitable Work  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 26, 2008, reference 04, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 17, 2008. The claimant participated personally. The employer participated through Holly Burtness, Staffing Consultant.

**ISSUE:**

The issue is whether the claimant is disqualified from receiving unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 3, 2008, as a temporary worker assigned to Nortech. At the time she was hired, the claimant did not limit her availability. She worked during the days for Nortech and decided to attend school two nights per week. Her assignment ended on May 2, 2008.

On May 15, 2008, the employer offered the claimant full-time overnight work at Larson paying \$380.00 per week. The claimant refused the work because she was attending school.

The claimant filed for unemployment insurance benefits with an effective date of April 13, 2008. Her average weekly wage during her highest quarter was \$297.54.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons, the administrative law judge concludes the claimant was not available for work. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4).

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The work was offered during hours in which suitable work for the claimant was available. If a claimant refuses work that's offered during those hours, the claimant has made herself unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits because she did not make herself available for work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The June 26, 2008, reference 04, representative's decision is reversed. The claimant is disqualified from receiving unemployment insurance benefits, because she did not make herself available for work. The claimant is overpaid unemployment insurance benefits in an amount of \$1,512.00.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw