

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JERRY E PILGRIM**  
Claimant

**EXPRESS SERVICES INC**  
Employer

**APPEAL 17A-UI-02105-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/22/17**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

Jerry E. Pilgrim (claimant) filed a timely appeal from the February 16, 2017, reference 01, unemployment insurance decision that denied benefits stating he had refused a suitable offer of work from Express Services, Inc. (employer). After due notice was issued, a telephone conference hearing was held on March 17, 2017. The claimant participated. The employer did not respond to the hearing notice and did not participate. No exhibits were offered or received into the record.

**ISSUES:**

Was a suitable offer of work made to the claimant?  
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for the employer's client Osage Manufacturing working an assembly position for \$11.00 an hour, 40 to 45 hours a week on first shift, until the assignment ended. The claimant filed for unemployment insurance benefits the week of January 22, 2017. The claimant's average weekly wage during his base period is \$331.00.

On January 23, 2017, the employer made an offer of work to the claimant. The position he was offered was at manufacturing facility in Osage for 40 hours a week on first shift. The wage offered for the job is \$11.00, which is comparable to the prevailing rate of pay for similar work in the Osage area. His average weekly wage on that job would be \$440.00.

The claimant declined the job as he was waiting to hear from another employer on a job for which he had applied that would require less standing than his previous job. The claimant still has not heard from that other employer, but has begun employment as a security guard at a local casino that allows him to sit down more frequently. The claimant does not have any restrictions from a doctor limiting his ability to stand.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to accept a suitable offer of work because he was not available for 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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Admin. Code r. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The offer may have been suitable, but the reason for the failure to accept the work was because the claimant was not available for work as he was waiting to hear from a specific employer. Therefore, he is not disqualified from receiving benefits on the basis of refusing work, but is not eligible for the unemployment insurance benefits effective January 22, 2017. Benefits are withheld until such time as claimant makes himself available for work.

**DECISION:**

The February 16, 2017, reference 01, decision is modified in favor of the claimant/appellant. The claimant declined an offer of work but was unavailable at the time. Benefits are withheld effective January 22, 2017, until such time as the claimant makes himself available for work.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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