

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH L WHITE
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 18A-UI-12463-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/02/18
Claimant: Respondent (5R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the December 24, 2018 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was unemployed due to a short-term layoff and was able to and available for work. The parties were properly notified of the hearing. A telephonic hearing was held on January 16, 2019. The claimant, Joseph L. White, did not answer when called for the hearing and did not participate in the hearing. The employer, Express Services, Inc., participated through Katy McMahon, Owner. The administrative law judge took official notice of the administrative record.

After the hearing concluded, claimant contacted the Appeals Bureau and explained that he was unavailable for the hearing because he was in a RESEA meeting with Iowa Workforce Development. The administrative law judge found this was a good-cause reason to miss the telephone call, so the hearing record was reopened. A second telephonic hearing was held on January 17, 2019. Both the claimant and McMahon participated in the hearing.

ISSUE:

Is the claimant able to work and available for work effective December 2, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time with this employer beginning October 11, 2016. He was most recently a general laborer assigned to the Real Estate Service Group, Inc. Claimant last reported to that assignment on November 30, 2018. Claimant's separation has not yet been the subject of a fact-finding interview with Iowa Workforce Development.

Claimant is physically able to work, and he is available for work. He has reliable transportation through rides from friends, and he is looking for work in his general geographical area. Claimant is actively looking for work in numerous fields. Claimant last contacted the employer on December 17, 2018. Claimant refused an assignment with the employer because it was too far for him to travel for the amount of money offered to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is currently able to work and available for work. Benefits are allowed, provided he is otherwise eligible.

Iowa Code § 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 section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 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 section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 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.

In order to be eligible for unemployment insurance benefits, an individual must be able to work and available for work. In this case, there is no indication that claimant is not physically able to work or is not available for work. Therefore, the administrative law judge finds claimant is able to and available for work, and benefits are allowed. This matter will be remanded to investigate claimant's separation from employment.

DECISION:

The December 24, 2018 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant is currently able to work and available for work. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of claimant's separation from this employer is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn