

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANDY PETESCH

Claimant

APPEAL NO: 15R-UI-09176-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 04/19/15

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 15, 2015, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 3, 2015. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Express Services. She was assigned to Klauer Manufacturing for one day and was paid \$11.50 per hour; she was assigned to Eagle Window and Door for two weeks and was paid \$11.50 per hour; and she was assigned to St. Vincent DePaul for over six months and started out earning \$8.00 per hour and after six months her pay increased to \$8.50 per hour. When that assignment ended the claimant filed for unemployment benefits insurance effective April 19, 2015. Within two weeks of the completion of her assignment at St. Vincent DePaul, the employer offered the claimant a position where she would have earned \$7.25 per hour. The claimant told the employer she had accepted another position with WS Live for \$10.00 and would not decline that job opportunity to take a job that paid \$7.25 per hour. Two weeks after starting her position with WS Live, the claimant was offered a position at Mystique Casino that paid \$11.88 per hour and the claimant accepted that position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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".

While the claimant declined to accept a position from Express Services paying \$7.25 per hour, the main reason she did not take that assignment was because she had been offered a full-time position earning \$10.00 per hour with WS Live. The claimant did not demand a wage higher than what is most common in her area for the type of work she was seeking. Consequently, she did not unduly limit her availability for work. Accordingly, benefits are allowed.

DECISION:

The May 15, 2015, reference 05, decision is reversed. The claimant is able to work and available for work effective April 19, 2015. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css