

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN L MCDOWELL

Claimant

APPEAL NO. 13A-UI-10975-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 08/11/13

Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 18, 2013, reference 02, that concluded he was not able to and available for work. A telephone hearing was held on November 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Ben Hamel, Attorney at Law. Valerie Hefel participated in the hearing on behalf of the employer. Exhibit One, Two, and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant's last job assignment was from May 10, 2013, to August 14, 2013, at Eagle Window & Door where he worked as a door assembler. The claimant has a 20-pound lifting restriction due to a hernia but had no problems with the job at Eagle Window & Door because he did not have to do any heavy lifting. The claimant completed his temporary work assignment and was told on August 15 that he was no longer needed on the assignment.

On or about August 18, the claimant was offered a job working as a warehouse worker for First Supply in Dubuque, Iowa. It was a two-week job that could have extended to a long-term position. The job paid \$10.00 per hour for 40 hours of work per week. The claimant was told that the job involved regular lifting of up to 50 pounds. He declined the job because of his hernia and weight restriction.

The claimant has worked as a press operator at Jeld-Wen Windows & Doors, which was a job that the claimant was able to do with his restrictions. He has worked as a cook in the past and could perform restaurant work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires lifting over 20 pounds. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law. The claimant was in fact working as a door assembler before applying for unemployment insurance benefits and had no problems doing the work.

DECISION:

The unemployment insurance decision dated September 18, 2013, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css