

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EARL H NELSON

Claimant

APPEAL NO: 13A-UI-04002-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 02/24/13

Claimant: Appellant (4/R)

Iowa Code § 96.4(3) Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 25, 2013 determination (reference 01) that held him ineligible to receive benefits as of February 24, 2013, because he was working enough hours that he had removed himself from the labor market. The claimant participated at the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that as of February 24, 2013, the claimant is eligible to receive benefits for weeks he earns gross wages of \$228.00 or less.

ISSUE:

As of February 24, 2013, is the claimant working enough hours that he has removed himself from the labor market?

FINDINGS OF FACT:

The claimant started working for the employer, a temporary employment agency, in late January 2013. The claimant established a second benefit year during the week of February 24, 2013. The claimant's maximum weekly benefit amount on this claim year is \$208.00. When the claimant established this second benefit year, he was still working for the employer.

The claimant filed claims for the following weeks:

Week ending	Wages reported
March 2, 2013	\$290
March 9, 2013	\$320
March 16, 2013	\$320
March 23, 2013	\$230
March 30, 2013	\$190
April 6, 2013	\$ 0
April 13, 2013	\$ 0
April 20, 2013	\$120
April 27, 2013	\$ 0

The claimant earns \$10.00 an hour. He attempted to file claims for the weeks ending March 30 through April 27, but the system did not record these weekly claims.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). (Emphasis supplied.) The law presumes a claimant is not available for work when his availability for other work is unduly limited because he is working to such a degree that he removes himself from the labor market. 871 IAC 24.23(23).

The evidence establishes that after the claimant established a second benefit year, he worked anywhere from 32 hours to zero hours for the weeks ending March 2 through April 27, 2013. Since the claimant's work assignment with the employer depends on clients' needs and the hours the claimant works can vary from week to week, disqualifying him indefinitely as of February 24, 2013, is not appropriate. A claimant's availability should be determined each week. Therefore, each week the claimant files a weekly claim should be reviewed to determine if he is eligible to receive benefits.

Since the claimant's maximum weekly benefit amount is \$208.00, any week he earns gross wages of \$223.00 or more, he is not eligible to receive benefits because of excessive earnings. 871 IAC 24.18. For the weeks ending March 2 through 23, he is not eligible to receive benefits because had excessive earnings or more than \$223.00. For the weeks ending March 30 through April 27, 2013, the claimant is potentially eligible to receive benefits because he earned less than \$223.00 in each of these weeks. Also, working 12 or 19 hours in a week does not remove him from the labor market.

Since the computer records do not indicate the claimant filed claims for the weeks ending March 30 through April 27, this matter will be remanded to process these claims. The claimant may need to go to his local Workforce office to get these weeks entered into the system, if they are not already entered.

DECISION:

The representative's March 25, 2013 determination (reference 01) is modified in the claimant's favor. Since each week a claimant files a claim for benefits should be reviewed to determine if he is eligible to receive benefits, the indefinite lock placed on the claimant's claim as of February 24, 2013, is not appropriate and his claim should be unlocked. The claimant is not eligible to receive benefits for the weeks ending March 2 through 23, 2013, because he had excessive earnings, not because he was not available for work.

This matter is **Remanded** to the Claims Section to enter claims for the weeks ending March 30 through April 27, 2013, since the claimant indicated he attempted to file these weeks, but could not. The claimant is potentially eligible to receive benefits for these weeks because he was available for work and did not have excessive earnings these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs