

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN L CALDWELL**  
Claimant

**APPEAL NO: 14A-UI-07828-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 06/30/13**  
**Claimant: Appellant (4)**

Section 96.5-3-a – Work Refusal  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Brian L. Caldwell (claimant) appealed a representative's July 28, 2014 decision (reference 08) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with an offer of work with Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-07829-DT. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant disqualified due to refusing an offer of suitable work? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on or about September 16, 2013. He worked full time as a production worker at the employer's Mason City, Iowa business client, working on the third shift. He was laid off for lack of work as of about February 21, 2014.

The claimant had established an unemployment insurance benefit year effective June 30, 2014. His base period employment was all working on the first shift. He had taken the third shift position with the employer because he needed to watch his kindergarten aged child when she was not in school. After his layoff with the employer, he reactivated his claim with an additional claim effective April 6, 2014.

On or about May 2 the employer offered the claimant a first shift position with another local business client at a rate of \$11.00. The claimant declined the position because he did not have

any childcare for his younger child at that time, and would not have childcare until school was out on or about May 30, when his older son would also have been out of school and would have been able to watch the younger child.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code § 96.5-3-a provides in pertinent part:

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. ...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. 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:

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

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

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

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

Rule 871 IAC 24.24(4) provides in pertinent part:

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 ... 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.

A claimant must remain available for work on the same basis as when his base period wages were accrued. Rule 871 IAC 24.22(2)f. The claimant's refusal of work was due to the childcare issue during the first shift, the shift which he had worked when his base period wages were accrued. Therefore, his refusal was for a good cause, and he would not be disqualified for that refusal. However, his eligibility as being able and available must now be determined.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A person who has childcare issues during the shift in which he had worked during this base period is not able and available for work so long as those childcare issues continue. Rule 871 IAC 24.23(8). The claimant was not able and available for work during the period from the benefit period of April 27 through May 31, 2014 because he did not have adequate childcare arrangements during that period. Benefits are denied for that period.

Effective June 1, 2014 the claimant had an alternative option for childcare that would have allowed him to accept first shift work if it had been offered to him after that time. Benefits are allowed as of that date, so long as he was otherwise eligible.

**DECISION:**

The representative's July 28, 2014 decision (reference 08) is modified in favor of the claimant. The claimant is not disqualified for refusing an offer of work on May 2, 2014. However, the claimant was not able to work and available for work effective April 27 through May 31, 2014. As of June 1, 2014 he became able and available for work, and as of that date benefits are allowed, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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