

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A WOODARD
Claimant

APPEAL NO. 11A-UI-08344-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/08/11
Claimant: Appellant (2)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 15, 2011, reference 02, that concluded he failed to accept an offer of suitable work without good cause. A telephone hearing was held on July 19, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Brandi Whittenbough participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 14, 2010. He filed an additional claim for benefits effective December 10, 2010. His average weekly wage based on the highest quarter of earning was \$628.28.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment at Ethan Allen in Cedar Rapids, Iowa, from January 8 to March 21, 2011. He was paid \$11 per hour for 37.5 hours per week. He completed that assignment and asked if there was other work available.

On March 22, 2011, the claimant was offered a job as parts maintenance clerk at TSTC Inc. in Walford, Iowa, about 20 miles from his residence. The job offered 40 hours of work at a rate of pay of \$13 per hour (\$520 per week). It was a temp-to-hire job meaning TSTC Inc. could have hired him as a permanent employee.

The transmission on the claimant's car had gone out while he was working at Ethan Allen, but that did not affect his employment there because he could walk to work. There is no bus service to Walford. The claimant did not have enough money to get his car fixed and the repair would have cost more than the car was worth. He did not have the money to buy another car.

The claimant declined the job because he had no transportation to this out-of-town job. He asked his mother if he could borrow her car, but she told him that he could not have it every day because she needed it. The claimant remained available to accept employment in the Cedar Rapids area and nearby towns served by Cedar Rapids Transit, which is where his past jobs have been.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

Iowa Code § 96.5-3-a provides:

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....

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.

The rules provide that the wage percentage is to be determined by the number of weeks that have lapsed since the effective date of the most recent new or additional claim was filed. 871 IAC 24.24(15)i. This raises an interesting question because while it had been 16 weeks since the claimant filed his additional claim for benefits effective December 10, 2010, he had only been unemployed for one day when he was offered the job with TSTC Inc. If the claimant would have filed an additional claim immediately when he became unemployed, the offered work would not have been suitable because it did not meet the 100 percent of his average

weekly wage of \$628.28. Applying the rule, the wage offered would be considered suitable because it was over 65 percent of the average weekly wage, which calculates to \$408.38. Even though I believe an argument could be made that the statute's language should prevail, I conclude that the Agency's rule is not unreasonable and should be followed under the facts here.

One of the factors that must be considered in deciding if the work offered was suitable is the distance of the available work from the individual's residence. In my judgment, since the claimant's last job and recent jobs have been in the close vicinity of Cedar Rapids, the job 20 miles away would not be suitable. In the alternative, I would conclude the claimant has shown good cause to decline the work based on being unable to travel to the worksite due to a transportation problem that was not the claimant's fault. The claimant made an effort to find transportation out of town but was unsuccessful.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment rules provide that claimants who lose their means of transportation from their residence to the area of the individual's usual employment are not available for work. But the rules provide that claimants shall not be disqualified for restricting employability to the area of usual employment. 871 IAC 24.23(4).

Based on these rules, the claimant would be considered available for work because he was available to work in the area of his usual employment in Marion and Cedar Rapids.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be charged.

DECISION:

The unemployment insurance decision dated June 15, 2011, 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/pjs