

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAULA L GREEN
Claimant

APPEAL NO. 15A-UI-04594-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 03/15/15
Claimant: Respondent (4R)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 9, 2015 reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on May 26, 2015. At the time of the first hearing, a separation issue came before the court. As parties were not noticed as to a separation issue, this matter was renoticed, and hearing was held on July 6, 2015. Employer participated by Alex Fagan. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant is able and available for work?

Whether claimant is overpaid unemployment insurance benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was injured at a placement on March 11, 2014. On March 12, 2014 claimant was released back to work with a restriction that claimant could not do lifting of items over her head. Employer did not have suitable work for claimant until March 18, 2014. On March 18, 2014 employer offered claimant employment working full-time day hours with greater pay, on the bus line, with no lifting required. Claimant declined the job offer, and never called employer back again asking for any other job placement.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to § 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to § 602.10101.

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the injury was work related but the treating physician released the claimant to return to light-duty work effective March 18, 2014, with such work offered by employer, the claimant was able to work. Claimant denied the job offered, so claimant has not satisfied the availability to work requirement. Benefits are withheld effective March 18, 2014. Any payments received after that date shall be deemed overpayment as employer offered claimant a position that was in accordance with claimant's work restriction. Benefits shall be allowed between March 11, 2014 and March 18, 2014.

DECISION:

The decision of the representative dated April 9, 2015, reference 01 is modified. Claimant is eligible to receive unemployment insurance benefits, for the one-week period between March 11, 2014 and March 18, 2014 provided claimant meets all other eligibility requirements. Claimant is not eligible to receive benefits effective March 18, 2014, as claimant declined an appropriate work offer. This matter is remanded to the fact finder to determine the amount of payment, if any, received by claimant after the date of March 18, 2014. Said payments shall be deemed to be overpayments and shall be repaid by the claimant as employer substantially participated in fact finding.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css