

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACIE L DIDDENS
Claimant

APPEAL NO. 12A-UI-13426-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 01/09/11
Claimant: Appellant (2)**

Section 96.5(3)a – Refusal of Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Tracie Diddens, filed an appeal from a decision dated April 18, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 10, 2012. The claimant participated on her own behalf. The employer, Express Services, did not provide a telephone number where a witness could be contacted and did not participate. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant refused an offer of work.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on April 18, 2011. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 28, 2011. The appeal was not filed until November 7, 2012, which is after the date noticed on the decision. The claimant denied receiving the decision at her address of record on that date.

Ms. Diddens does not recollect an offer of work being made by Express Services or a refusal on her part. It appears she was already employed elsewhere at the time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the

claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge finds it odd Ms. Diddens did not receive the decision as it appears she received everything else which was sent to her by Iowa Workforce Development. But having no evidence to the contrary, must accept the claimant's denial. The appeal was prompted by an overpayment decision in November 2012.

Iowa Code section 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. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. 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.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The employer did not participate in the hearing to provide any evidence of the alleged off of work. In any event, the claimant was employed elsewhere at the time. Under the provisions of the above Administrative Code section, this is good cause for refusing an offer of work and the claimant is qualified for benefits.

DECISION:

The decision of the representative dated April 18, 2011, reference 02, is reversed. The appeal in this case shall be accepted as timely. The decision of the representative is reversed. The claimant is qualified for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css