

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE L JORDAN
Claimant

APPEAL NO. 07A-UI-04497-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/01/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 27, 2007, reference 01, that concluded the claimant had completed his temporary work assignment. A telephone hearing was held on May 17, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Chris Wundram participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

The claimant worked on a long-term assignment as a screen printer for Adidas from July 15, 2004, to March 28, 2007. He worked full time and his rate of pay was \$10.25 per hour.

On March 28, 2007, the claimant was informed by Adidas that he was being terminated from his assignment. Adidas had conducted a criminal background check because it was considering hiring the claimant as a permanent employee. They terminated his assignment based on his criminal history. The claimant was convicted of a misdemeanor for which he spent one day in jail. The only other offenses the claimant had were traffic tickets. The misdemeanor conviction occurred before the claimant started working on the assignment at Adidas in July 2004.

The claimant reported to the employer's office on April 2 and asked if there was work available. There was no available work at that time.

The claimant contacted the employer again on April 4. On April 4, a staffing representative offered the claimant an assignment working at Procter & Gamble in Iowa City. It was a full time assembly or packer position that paid \$7.55 to \$8.35 per hour depending upon the shift. The claimant declined the offer because the job was approximately 25 miles from the claimant's home and he did not want to commute. The claimant declined the same job for the same reasons when he was offered an assignment at Procter & Gamble on May 1.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 1, 2007. The claimant's average weekly wage during the highest quarter earnings in his base period was \$574.62.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The evidence does not establish that the claimant's separation from work on March 28, 2007, was for work-connected misconduct as defined in 871 IAC 24.32(1), which requires a deliberate act in violation of a worker's duties and obligation to the employer. The claimant was removed from the assignment due to conduct that the claimant committed before he started working for the employer in July 2004. No willful and substantial misconduct has been proven in this case.

The next issue is whether the claimant is subject to disqualification under Iowa Code section 96.5-1-j. This law provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant contacted the employer on April 2, which was within three days after his assignment ended.

The final 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 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....

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 work offered on April 4 and May 1, 2007, would not be considered suitable because it offered pay less than \$574.62 per week, which is 100 percent of the claimant's average weekly wage in his highest quarter of earnings in his base period.

DECISION:

The unemployment insurance decision dated April 27, 2007, reference 01, is affirmed. 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