

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN L MCDOWELL

Claimant

APPEAL NO. 13A-UI-10974-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 08/11/13

Claimant: Appellant (2)

871 IAC 24.1(113)a – Layoff
Section 96.5-3-a – Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 18, 2013, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Ben Hamel, Attorney at Law. Valerie Hefel participated in the hearing on behalf of the employer. Exhibit One, Two, and A were admitted into evidence at the hearing. The parties agreed that the issue of whether the claimant failed to accept an offer of suitable work could be included in the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's high-quarter, base-period wages totaled \$5,887.99. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant's last job assignment was from May 10, 2013, to August 14, 2013, at Eagle Window & Door where he worked as a door assembler. The claimant has a 20-pound lifting restriction due to a hernia but had no problems with the job at Eagle Window & Door because he did not have to do any heavy lifting. The claimant completed his temporary work assignment and was told on August 15 that he was no longer needed on the assignment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 11, 2013. His claimant's high-quarter, base-period wages totaled \$5,887.99. His average weekly wage based on his high quarter wages is \$452.92 or \$11.32 per hour.

On or about August 18, the claimant was offered a job working as a warehouse worker for First Supply in Dubuque, Iowa. It was a two-week job that could have extended to a long-term position. The job paid \$10 per hour for 40 hours of work per week. The claimant was told that the job involved regular lifting of up to 50 pounds. He declined the job because of his hernia and weight restriction.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant never quit employment and completed his work assignment with no allegation of misconduct.

The next 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 claimant had good cause to decline the offer of work made on May 18, 2013, because there was a risk to his health and the job did not provide 100 percent of his average weekly wage of \$452.92.

DECISION:

The unemployment insurance decision dated September 18, 2013, reference 01, is reversed. The claimant was not discharged for misconduct, did not voluntarily quit, and had good cause to decline the work offered. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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