

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FREDERICK DAVIS

Claimant

EXPRESS SERVICES INC

Employer

APPEAL 15A-UI-01902-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/04/15

Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 6, 2015 (reference 03) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 12, 2015. The claimant participated. The employer participated through Valorie Hefel and Lori Kleine. The claimant was not separated from employment. The issue became a question of work refusal, which was not listed on the hearing notice. The claimant and the employer's representatives agreed to waive the right to written notice of the issue of work refusal and the opportunity to participate in a fact-finding interview on that issue. Testimony was received on the relevant issues. No exhibits were admitted into evidence.

ISSUES:

Was a suitable offer of work made to the claimant?

If so, did the claimant fail to accept a suitable offer of work and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: On January 14, 2015 the employer made an offer of work to claimant via an automated calling system. The offer went out to numerous individuals as an immediate opening for one day of work on January 15, 2015. The shift was 4:00 p.m. to 1:00 a.m. at Hormel. Hours before the shift started, the claimant returned the automated call and reported that he was unable to accept the position. Hearing testimony indicated that the wage offered for the one-day assignment was \$10.50 per hour.

The claimant received an automated call from the employer on February 4, 2015 for a long-term assignment. The claimant was employed at another position at the time and did not accept the assignment because it paid significantly less per hour than he was currently making and it would require him to quit his current position. The claimant is still working in that temporary assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not receive a suitable offer of work.

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. 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.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

He did not speak directly to a person or receive a written offer via certified mail. No meaningful offer of work was actually communicated to claimant.

If the employer is unable to make personal contact to extend an offer of work, a written offer with sufficient detail may be sent by certified mail with return receipt requested. Since no suitable offer of work was actually made, benefits are allowed.

DECISION:

The February 6, 2015 (reference 03) decision is reversed. The employer did not communicate a suitable offer of work to claimant. Benefits are allowed, provided claimant is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/can