

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN D WALLACE
Claimant

APPEAL NO: 15A-UI-02698-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 01/04/15
Claimant: Appellant (4)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jonathan D. Wallace (claimant) appealed a representative's February 23, 2015 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-02699-DT. The claimant participated in the hearing. Chelsea Thompson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work? Is the claimant able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's most recent assignment was working full time on a first shift position at a rate of \$12.50 per hour for a business client located in Floyd, Iowa, a drive of 15 to 18 miles from the claimant's home in Charles City, Iowa. His last day at that assignment was December 31, 2014.

When the claimant's assignment ended, he understood that there was a reasonable likelihood that he might be recalled to the assignment in the spring, and that it could become a permanent full-time position. He established an unemployment insurance benefit year effective January 4, 2015. His weekly benefit amount was calculated to be \$206.00; this was based on an average weekly wage for the high quarter of his base period of \$365.61, or a full-time hourly average of \$9.14.

On January 14 the employer's staffing consultant, Thompson, called the claimant and offered him some positions with two companies, both located in Osage, Iowa, which would have been a drive of about 30 miles from the claimant's home, within the 45-mile radius the claimant had

indicated he would be able to work. He declined the positions, which would have paid between \$11.00 and \$11.20 per hour. He stated that the reason was that he "had heard bad things" in reference to the one company. However, the true reason that he declined all of the positions was that the family's second vehicle, which he had used to get to and from the work in Floyd, was out of commission, so he did not have a reasonable means of transportation to get to a job in Osage, and further, because he wanted to keep himself available for possible recall back to the company in Floyd.

The company in Floyd ultimately did seek to have the claimant return on or about March 20, but by that time the claimant had suffered a knee injury and was not able to return to work. As of the date of the hearing the claimant had not yet been cleared as medically able to work. The issue with his transportation was not resolved until about the middle of March.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is disqualified for refusing a suitable offer of work.

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.

Rule 871 IAC 24.4(4) provides:

Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant must remain available for work on the same basis as when his base period wages were accrued. Rule 871 IAC 24.22(2)f.

Rule 871 IAC 24.23 provides in pertinent part:

The following are reasons for a claimant being disqualified for being unavailable for work[:]

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. . . .

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(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.

While the offer of work was suitable, since the reasons for the claimant's refusal are primarily due to issues relating to the claimant's availability for work, the disqualification must rest on the availability determination, rather than the refusal issue. Therefore, while the claimant is still disqualified from receiving benefits, he is not subject to the ten times requalification requirement. Rather, he must simply become able and available for work, both in terms of his medical ability to work, and in terms of his ability to secure transportation. Benefits are denied as of January 14, 2015 until such time as he is able to so demonstrate.

DECISION:

The representative's February 23, 2015 decision (reference 01) is modified in favor of the claimant. The claimant did refuse a suitable offer of work, but it was because of an issue relating to his availability for work. The claimant is not able to work and available for work effective January 14, 2015. The claimant is currently not qualified to receive unemployment insurance benefits.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs