

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TED J MCPHAIL**  
Claimant

**APPEAL NO. 09A-UI-07448-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**Original Claim: 04/05/09  
Claimant: Respondent (4)**

Section 96.5(3)a – Refusal of Work  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Express Services, filed an appeal from a decision dated May 7, 2009, reference 03. The decision allowed benefits to the claimant, Ted McPhail. After due notice was issued, a hearing was held by telephone conference call on June 8, 2009. The claimant participated on his own behalf. The employer participated by Staffing Consultant Holly Burtness.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

Ted McPhail began employment with Express on August 15, 2005. His last day of work was February 16, 2009, when his last assignment at Aeron Advance Manufacturing ended. On April 15, 2009, Staffing Consultant Holly Burtness contacted the claimant by phone to offer him a two-day assignment with Aeron. Mr. McPhail's girlfriend's mother had been hospitalized in Omaha, Nebraska, and the two of them were leaving immediately to visit her.

Ted McPhail has received unemployment benefits since filing a claim with an effective date of April 5, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant refused the offer of work for April 15, 2009, because personal problems made him temporarily unavailable. Under the provisions of 871 IAC 24.24(3), each case is to be determined on its own merits and good cause for refusing an offer of work may nevertheless disqualify a claimant as not being available for work.

The claimant refused the offer of work due to being out of town on personal business and this would make him ineligible for benefits, as he was not available for work that week due to being out of town.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of May 7, 2009, reference 03, is modified in favor of the appellant. Ted McPhail is not disqualified from receiving benefits as a result of his refusal of work. But, he is ineligible for the one-week period ending April 18, 2009, as he was out of town the majority of the week on personal business. He is overpaid \$163.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw