

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEPHEN F FUNK
306 N HAWKEYE
NORA SPRINGS IA 50458

EXPRESS SERVICES INC
P O BOX 23506
OKLAHOMA CITY OK 73123

Appeal Number: 06A-UI-05460-SWT
OC: 04/23/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 17, 2006, reference 02, that concluded he refused suitable work. A telephone hearing was held on June 1, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Andre Smith participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant started working for the employer August 26, 2005. He worked on an assignment at Sunny Fresh Foods until April 24, 2006, when the assignment ended.

The claimant received a call from a representative with the employer on the afternoon of April 28, 2006, offering him work that evening at Sunny Fresh Foods. It would have been a one or two day job and would have been the same type of work at one dollar per hour less than what he had been paid in the past. The claimant declined the offer because he could not arrange for a ride to work on such short notice and would not have been sufficiently rested to work the overnight shift. He received an identical offer of work on May 8 to work that evening and declined the job for the same reason.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 23, 2006. His average weekly wage during the highest quarter of earnings in his base period was \$652.84 (\$16.32 per hour). The claimant has accepted and worked on assignments for the employer since May 8.

REASONING AND CONCLUSIONS OF LAW:

The 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 claimant is not subject to disqualification under Iowa Code section 96.5-3-a because the rate of pay was less than 100 percent of his average weekly wage based on his highest quarter of earnings and because he was called in the afternoon to work overnight, which is not reasonable notice regarding an job opening. He was otherwise able to and available for work as shown by the fact that he has accepted subsequent assignments with the employer.

DECISION:

The unemployment insurance decision dated May 17, 2006, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kkf