

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY PICKETT-WILSON
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 21A-UI-00748-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/13/20
Claimant: Respondent (5R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On December 11, 2020, Express Services, Inc. (employer) filed an appeal from the December 3, 2020, reference 01, unemployment insurance decision that allowed benefits effective September 13, 2020, based upon the determination Jeremy Pickett-Wilson (claimant) was on a short-term layoff and considered able to and available for work. After due notice was issued, a telephone hearing was held on February 10, 2021. The claimant did not respond to the hearing notice and did not participate. The employer participated through Pam Myers, Owner. The employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work, available for work, and actively and earnestly seeking work effective September 13, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer as a temporary employee on October 3, 2016. On August 25, 2020, the claimant began his final assignment with Future Foam. The assignment ended on September 9, due to the client's dissatisfaction with the claimant's performance. The client had continuing work available, and it had not temporarily closed. The employer notified the claimant of the end of the assignment and he did not request another assignment. Whether the claimant's separation from employment on or about September 9 qualifies him for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau.

The claimant filed his claim for benefits effective September 13, following the separation. He claimed benefits each week through October 17. He did not report any wages earned during any of these weeks. The claimant also reported, under threat of perjury, each week that he was able to and available for work.

The claimant contacted the employer on October 9 seeking another assignment. The employer offered him an assignment with Fast-Trac working full-time hours on first shift earning \$12.00 an hour. The claimant never responded to the job offer. Whether the claimant refused a suitable offer of work on or about October 9 has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was totally unemployed, and he was able to and available for work. Benefits are allowed, provided he is otherwise eligible.

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".

Iowa Code section 96.19(38) provides:

Definitions.

38. Total and partial unemployment

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when someone has received no wages and performed no services during any given week. *Id.* Temporary unemployment occurs when the employer does not have work available for a limited time. In this case, the claimant was not separated from the assignment because the client lacked work; therefore, he was totally unemployed.

As the claimant was totally unemployed, he needs to be able to work, available for work, and actively and earnestly seeking work. An individual claiming benefits has the burden to prove that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant filed for benefits each week and, under the threat of perjury, he reported that he was able to and available for work. The employer did not have any information to refute his assertions. Accordingly, benefits are allowed, provided he is otherwise eligible

The issues of whether the claimant voluntarily quit employment in September by failing to request a new job assignment within three days of the end of an assignment; and, whether he refused a suitable offer of work on or about October 9 are remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decisions.

DECISION:

The December 3, 2020, reference 01, unemployment insurance decision is modified with no change in effect. The claimant is able to work and available for work effective September 13, 2020. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issues of whether the claimant voluntarily quit employment in September by failing to request a new job assignment within three days of the end of an assignment; and, whether he refused a suitable offer of work on or about October 9 are remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decisions.



Stephanie R. Callahan
Administrative Law Judge

February 22, 2021
Decision Dated and Mailed

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