

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ERIC NELSON**  
Claimant

**APPEAL NO. 14A-UI-03127-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 02/09/14  
Claimant: Appellant (2)**

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Iowa Code § 96.4-3 - Availability for Work  
Iowa Code § 96.5-3-a - Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Eric Nelson (claimant) appealed an unemployment insurance decision dated March 17, 2014, (reference 02), which held that he was not eligible for unemployment insurance benefits because he refused an offer of suitable work with Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2014. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. The job refusal and able and available issues were inadvertently left off the hearing notice. The claimant waived his right to a formal notice of these issues so they could be addressed in the hearing today.

**ISSUE:**

The issue is whether the claimant is able and available, and if so, whether he refused a suitable offer of work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer offered the claimant work on February 14, 2014, at Winnebago Industries in Forest City, Iowa. The claimant could not accept the job offer because he lives in Mason City and does not have a driver's license to drive to Forest City. He is able and available to work at jobs within Mason City though.

## REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

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 testified that he is able and available for work in the city in which he lives and his testimony is found credible. Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

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.

The claimant refused a job offer on February 14, 2014, but the work was not suitable due to the distance of the available work from his residence. Since the claimant did not refuse a suitable offer of work, he qualifies for benefits, provided he is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated March 17, 2014, (reference 02), is reversed. The claimant did not refuse a suitable offer of work and qualifies for benefits, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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