

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

ROBERT E MULLIKIN
513 W 4TH ST S
NEWTON IA 50208-4643

INTERNATIONAL PIPE MACH CORP
PO BOX 130
BOONE IA 50036

Appeal Number: 06A-UI-07658-SWT
OC: 07/24/05 R: 02
Claimant: Respondent (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 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 27, 2006, reference 01, that concluded the claimant was not subject to disqualification for failing to accept work. A telephone hearing was held on August 16, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Therese Gallagher participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full-time for the employer as a foundry employee from May 9, 2005 to June 30, 2006. Under the union contract, the employer schedules a two-week shutdown of the plant during the summer for plant maintenance. Employees who have vacation pay available are required to use it during the plant shutdown. Employees are allowed to volunteer if they

desire to work during the plant shutdown. These employees are paid their normal rate of pay and are provided full-time work. The claimant understood these provisions.

For 2006, the plant shutdown was from July 3 to July 14, 2006. The claimant was scheduled to work during the second week of the shutdown. He did not volunteer to work during the first week of the shutdown even though he knew there was work available. The claimant did not have vacation pay to cover the time off. He decided not to work because he had things that he wanted to do at home.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of July 2, 2006. He filed for and received \$330.00 in unemployment insurance benefits for the week ending July 8, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3.

Under the unemployment insurance rules, a claimant is considered unavailable for work if he fails to work the major portion of a scheduled workweek for the claimant's regular employer. 871 IAC 24.23 (29). This rule should apply in the case like this where the claimant is aware that the employer has full-time work available during a particular week but chooses not to work.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective July 2, 2006 and was overpaid \$330.00 in benefits for the week ending July 8.

DECISION:

The unemployment insurance decision dated July 27, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits effective July 2, 2006, and was overpaid \$330.00 in benefits.

saw/cs