

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

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COMMUNITY BASED SERVICES INC
7611 DOUGLAS AVE #36
URBANDALE IA 50322

AMENDED
Appeal Number: 06O-UI-08024-S2T
OC: 12/04/05 R: 2
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 and Available
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Community Based Services (employer) appealed a representative's June 6, 2006 decision (reference 05) that concluded Edwin Cole (claimant) was eligible to receive unemployment insurance benefits. A hearing was held on August 24, 2006, following due notice pursuant to Remand Order of the Employment Appeal Board dated August 7, 2006. The claimant did not provide a telephone number where he could be reached. The administrative law judge dialed the number the claimant provided for the July 5, 2006, hearing in this matter. The claimant did not answer the telephone and, therefore, did not participate. The employer participated by Shelly Ackelson, Health Care Systems Manager, and Steven Thornburg, President.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 19, 2005, as a part-time certified nursing assistant. The employer has had continuing work available for the claimant. The employer leaves messages for the claimant every week. Rarely does the claimant respond to the messages. The claimant last worked for the employer on August 11, 12 and 13, 2006. The employer has been unable to reach the claimant since August 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

When an employee is not willing to perform work during the hours that work is available he is considered to be unavailable for work. The claimant is not willing to make himself available for the regular hours of his work. In addition, the claimant was hired as a part-time worker and is still working part-time for the employer. He is still employed in a part-time position as was agreed to at the time he was hired. The claimant is disqualified from receiving unemployment insurance benefits because he was not available for work.

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 benefits in the amount of \$1,968.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's June 6, 2006 decision (reference 05) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with the employer. The claimant is overpaid benefits in the amount of \$1,968.00.

bas/cs/cs