

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

ARTHUR BONNICKSEN
1010 YUMA AVE
AMES IA 50014

CENTRAL IOWA TRANSIT INC
2701 FORD ST
AMES IA 50010

ARTHUR BONNICKSEN
10032 GAPPA RD
RAY MN 56669

Appeal Number: 05A-UI-06854-BT
OC: 05/29/05 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 and Available for Work
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Central Iowa Transit (employer) appealed an unemployment insurance decision dated June 20, 2005, reference 01, which held that Arthur Bonnicksen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2005. The claimant participated in the hearing. The employer participated through Case Speake, Operations Manager. Employer's Exhibit One was admitted into evidence.

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 as a part-time school bus driver in August 2004 and continues to be employed in that same capacity. Although the claimant's customary period of employment runs concurrent with the school term, the employer also provides some work during the summer months. The claimant requested and was granted a leave of absence from May 20, 2005 through August 2005. He also signed a paper indicating he was not available from June 1, 2005 through August 19, 2005.

The claimant participated in the hearing from Minnesota, where he is on vacation. He testified that he is not available to work.

The claimant filed a claim for unemployment insurance benefits effective June 20, 2005 and has received benefits after the separation from employment in the amount of \$918.00.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. For the following reasons, the Administrative Law Judge concludes the claimant is not 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".

871 IAC 24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). In addition to requesting and receiving a leave of absence from May 20, 2005 through August 2005, the claimant also signed a document that he was not available for work from June 1, 2005 through August 19, 2005. Furthermore, the claimant testified that he is on vacation in Minnesota and is not available for work. Consequently, the claimant is not eligible for benefits for a 13-week period beginning May 22, 2005 through August 20, 2005.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 20, 2005, reference 01, is reversed. The claimant is not available for work and benefits are denied through week ending August 20, 2005. The claimant is overpaid benefits in the amount of \$918.00.

sdb/sc