

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

TIMOTHY FREIBOTH  
PO BOX 3  
205½ W MAIN ST  
LEGRAND IA 50142

GETHMAN CONSTRUCTION INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 05A-UI-12264-BT  
OC: 05/01/05 R: 02  
Claimant: Respondent (6/R)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.7 – Employer Liability – Wrong Employer Noticed

STATEMENT OF THE CASE:

Gethmann Construction, Inc. (employer) appealed an unemployment insurance decision dated November 28, 2005, reference 03, which held that Timothy Freiboth (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 21, 2005. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer was available to participate through Susan Wagner, Payroll Clerk, and Tom Lindquist of TALX UC eXpress. Prior to the start of the hearing, it was determined the unemployment claim and subsequent appeal were set up based on the wrong employer.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The notice of claim was sent to the incorrect employer. Trillium Construction Services, doing business as Midwest Construction Services, is a temp agency that employed the claimant and contracted him to work for the employer herein. The claimant was not employed by and was not paid wages by Gethmann Construction. There has been no determination made as to whether the claimant's separation from Trillium Construction Services was disqualifying or not.

REASONING AND CONCLUSIONS OF LAW:

The disqualification decision and resulting appeal were filed in error. The administrative law judge has reviewed the records and files herein and concludes that the original decision should be vacated and the appeal should be dismissed as to Gethmann Construction, Inc.

This case is remanded to the Claims Section for a proper determination as to the claimant's eligibility for benefits based on the correct employer.

DECISION:

The unemployment insurance decision dated November 28, 2005, reference 03, is vacated. Gethmann Construction, Inc. did not employ the claimant and its account is not subject to charge. This case is remanded to the Claims Section for a determination on whether the claimant is eligible for benefits based on his separation from Trillium Construction Services.

sdb/kjw