

**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**

**Appeal Number: 05A-UI-03347-S2T
OC: 02/06/05 R: 04
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.

**LARRY W WILLIAMS
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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)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available
Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Bradley Jo Charter (employer) appealed a representative's March 22, 2005 decision (reference 02) that concluded Larry Williams (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2005. The claimant was represented by Craig Arbuckle, Attorney at Law, and participated personally. The employer was represented by Stephen Krumpe, Attorney at Law, and participated by Brad Blum, President, and Brenda Schumacher, Office Secretary. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one

exhibit which was marked for identification as Exhibit One. Exhibit One was received 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 in May 2001, as a full-time driver. The employer offers bus tours, day bus trips, charter bus trips and sports trips. The claimant became the co-owner of Front Gate Tours during his tenure with the employer. In December 2004, he advertised on his company's website that he offered bus tours, day bus trips, charter bus trips and sports trips. The claimant thought the employer knew he owned the business and did not object. The employer was unaware of the claimant's competitive business.

The claimant and employer's relationship began to deteriorate around December 2004. The employer received numerous complaints about the claimant's job performance and each time the employer made the claimant aware of the complaints. The claimant was increasingly unhappy with his work.

The claimant was on vacation from January 23 through February 5, 2005. On February 5, 2005, the claimant stopped by the office to get his W-2 and paycheck but did not take his job assignment paperwork. His next trip was scheduled for February 12, 2005. The employer's policy was that everyone should take the next job assignment paperwork at the time the employee takes his paycheck. The claimant was unaware of this policy. The employer thought the claimant quit on February 5, 2005, because he was unhappy with his job, was receiving increasing complaints and did not take the paperwork.

On February 7, 2005, the employer discovered the claimant was engaged in competition with him and became angry. The employer left a telephone message for the claimant stating the claimant was fired.

On February 8, 2005, the employer received a letter from the claimant's attorney concerning bonus payment issues. On February 11, 2005, the employer's attorney sent the claimant's attorney a letter stating the claimant was considered to have quit work because he did not pick up his work orders. Should the claimant wish to continue work with the employer, he should pick up his work orders and cease and desist operating a competing business. The claimant did not respond to the employer.

Since the separation from employment on February 7, 2005, the claimant has been devoting time to his self-employment. He maintains his business, Front Gate Tours, drives for Front Gate Tours and drives for Stratton Charter.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. For the following reasons the administrative law judge concludes he was not. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4). The claimant was not able and available for work.

871 IAC 24.23(7) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

When an employee is devoting time and effort to being self-employed, he is considered to be unavailable for work. The claimant was devoting his time and efforts to running his own business and contracting his services out to another charter company. He is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits due to his unavailability 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 \$4,340.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid. That overpayment is addressed in 05A-UI-03346-S2T.

DECISION:

The representative's March 22, 2005 decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work. The claimant is overpaid benefits in the amount of \$4,340.00. That overpayment is addressed in 05A-UI-03346-S2T.

bas/sc