

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**STEVE L JACKSON**

Claimant

**APPEAL NO. 10A-UI-03616-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**

Employer

**OC: 01/17/10**

**Claimant: Respondent (2R)**

871 IAC 24.25(19) – Temporary and Casual Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 22, 2010, reference 01, decision that allowed benefits beginning January 15, 2010. After due notice was issued, a hearing was held on April 22, 2010. Claimant Steve Jackson was not available at the telephone number he had provided for the hearing and did not participate. Suzette Harms, Customer Service Representative, represented the employer. Exhibits One through Six were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant has been able to work and available for since January 17, 2010.

Whether the claimant has been temporarily unemployed, laid off, since January 15, 2010.

Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Steve Jackson performed work in day-labor assignments for the employer and last performed work in such an assignment, shoveling snow, on January 14, 2010. Mr. Jackson completed the January 14, 2010 assignment. On January 15, 16, and 17, Mr. Jackson did not appear at the workplace for a new day-labor assignment. On January 18, 2010, Mr. Jackson appeared at the workplace and signed in, but left before the employer distributed day-labor assignments. Mr. Jackson made no further contact with the employer after January 18, 2010.

The employer has a written end-of-assignment notification policy that obligated Mr. Jackson to contact the employer within three working days of the end of an assignment. The policy statement is five paragraphs long, takes up an entire page, and includes part of the text of Iowa Code section 96.5(1)(j). The policy statement includes the following run-on and self-contradictory statement:

By signing below, I acknowledge receiving this form and the above statement of Iowa's unemployment laws, and further acknowledge that I have read and understand these laws and have had the opportunity to request a copy of this form.

The employer representative does not know whether Mr. Jackson received a copy of the end-of-assignment notification policy.

Workforce Development records indicate that Mr. Jackson's base period wage credits are based on part-time employment and suggest less than full participation in the labor market. Mr. Jackson's base period consists of the fourth quarter of 2008 and the first, second, and third quarter of 2009. Workforce Development records indicate that Mr. Jackson had no wages during the fourth quarter of 2008. Mr. Jackson had \$858.06 in wages for the first quarter of 2009, \$2,012.87 in wages during the second quarter of 2009, and \$2,462.24 in wages during the third quarter of 2009.

Mr. Jackson established a claim for unemployment insurance benefits that was effective January 17, 2010. Mr. Jackson has received \$1,777.72 in regular unemployment insurance benefits for the period of January 17, 2010 through April 3, 2010. During the same period, Mr. Jackson would have received \$25.00 in weekly federal stimulus benefits. The total federal stimulus benefits would have totaled \$275.00 for the 11-week period.

#### **REASONING AND CONCLUSIONS OF LAW:**

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".

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The weight of the evidence indicates that Mr. Jackson was not available for work with Labor Ready Midwest, Inc., effective January 15, 2010. The evidence does not indicate a temporary layoff. Mr. Jackson failed to appear for the hearing and thereby failed to present any evidence whatsoever to establish that he has otherwise been able to work and available for work since he established his claim for benefits. The weight of the evidence in the record fails to establish that Mr. Jackson has been available for work since he filed his claim for benefits. Benefits are denied effective January 17, 2010.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because Mr. Jackson received benefits for a period when he was not eligible for benefits, those benefits constitute an overpayment of benefits that Mr. Jackson must repay. Mr. Jackson is overpaid \$1,777.72 in regular unemployment insurance benefits and \$275.00 in federal stimulus benefits.

The evidence indicates a separation, not a temporary layoff, effective on or about January 15, 2010. Because the separation issues were not included in the notice for the appeal hearing and because the claimant was not available to waive notice on issues related to the separation, this matter must be remanded to the Claims Division for entry of a decision regarding the separation. The decision regarding the separation should take into consideration the present decision regarding the claimant's availability.

**DECISION:**

The Agency representative's February 22, 2010, reference 01, decision is reversed. The claimant has not demonstrated that he has been available for work since he established his claim for benefits. Benefits are denied effective January 17, 2010. The claimant is overpaid \$1,777.72 in regular unemployment insurance benefits and \$275.00 in federal stimulus benefits for the 11-week period of January 17, 2010 through April 3, 2010.

This matter is remanded to the Claims Division for entry of a decision regarding the separation. The decision regarding the separation should take into consideration the present decision regarding the claimant's availability.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css