

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

KYLE M MCHENRY
407 E 3RD ST APT 1
VINTON IA 52349

LABOR READY MIDWEST INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

LABOR READY MIDWEST
ATTN PAYROLL TAX DEPARTMENT
PO BOX 2910
TACOMA WA 98401-2910

Appeal Number: 05A-UI-06984-AT
OC: 06-05-05 R: 03
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 96.5-1 – Voluntary Quit
Section 96.4-3 – Available for Work
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. filed a timely appeal from an unemployment insurance decision dated June 22, 2005, reference 01, which allowed benefits to Kyle M. McHenry. After due notice was issued, a telephone hearing was held July 25, 2005, with Mr. McHenry participating. Branch Manager James Deromedi participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kyle M. McHenry was employed by Labor Ready Midwest, Inc. on assignment to Twin City Concrete from March 23, 2005 through May 23, 2005. Mr. McHenry, who lives in Vinton, Iowa, worked at Twin City Concrete in Vinton but then was required to drive to Cedar Rapids daily to turn in work slips from which Labor Ready billed Twin City Concrete. Mr. McHenry blew the head gasket on his automobile on May 24, 2005, making it impossible for him to travel to Cedar Rapids. His car has not been repaired. During the base period upon which his benefits are computed, Mr. McHenry worked in Cedar Rapids, commuting from Vinton. He has received unemployment insurance benefits since filing a claim effective June 5, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the separation from employment was a disqualifying event. It was.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

An individual is presumed to have left work without good cause attributable to the employer if the individual leaves work because of a lack of transportation. See 871 IAC 24.25(1). Even if viewed as a discharge, absence because of a matter of personal responsibility, such as transportation, is considered to be a separation for misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Benefits must be withheld.

Furthermore, an individual must be available for work in order to be eligible to receive unemployment insurance benefits. See Iowa Code section 96.4-3. An individual who loses transportation from his or her residence to his or her area of usual employment is considered to be unavailable for work. See 871 IAC 24.23(4). The evidence in this record establishes that Mr. McHenry's usual area of employment is Cedar Rapids, not Vinton. Until such time as the claimant establishes that he has obtained transportation to the Cedar Rapids area, he will remain ineligible for unemployment insurance benefits.

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.

Mr. McHenry has received unemployment insurance benefits in error. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 22, 2005, reference 01, is reversed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. He has been overpaid by \$1,029.00.

sc/kjw