

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY J SWANSON**  
Claimant

**APPEAL NO: 06A-UI-08934-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RLS INC**  
Employer

**OC: 08/06/06 R: 4  
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, RLS, Inc., filed an appeal from a decision dated August 28, 2006, reference 02. The decision allowed benefits to the claimant, Jeffrey Swanson. After due notice was issued, a hearing was held by telephone conference call on September 21, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate.. The employer participated by Co-Owners Vickie Stoneking and Rick Stoneking.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Jeffrey Swanson began employment with RLS, Inc. on September 2, 2003. He is a full-time laborer. The claimant was no-call/no-show to work on Friday, August 4, 2006, and did not show up for work or contact the employer again until August 11, 2006. Work was available during the week had he shown up for work or contacted the employer earlier.

Jeffrey Swanson has received unemployment benefits since filing a claim with an effective date of August 6, 2006.

**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".

The claimant was not able and available for work for the week ending August 12, 2006. He did not appear for work or contact the employer even though there was work he could have been doing. He is not eligible for benefits as he did not make himself available to his regular employer.

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.

871 IAC 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of August 28, 2006, reference 02, is reversed. Jeffrey Swanson is not eligible for benefits for the one-week period ending August 12, 2006, because he was not able and available for work. He is overpaid in the amount of \$379.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/cs