

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE E YANCEY
Claimant

APPEAL NO. 07A-UI-00564-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/22/06 R: 03
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

The claimant, Lawrence Yancey, filed an appeal from a decision dated January 3, 2007, reference 01. The decision warned him to make two job contacts per week to maintain eligibility for unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 31, 2007. The claimant participated on his own behalf.

ISSUE:

The issue is whether the claimant was able and available for work for the week ending December 30, 2006.

FINDINGS OF FACT:

Lawrence Yancey filed a claim for unemployment benefits with an effective date of October 22, 2006. He was required to make two job contacts per week to maintain eligibility for benefits. After filing his claim he accepted work from another employer which turned out to be less than full-time and continued filing his weekly claims. His local Workforce Center advised him he must continue to make job contacts.

For the week ending December 30, 2006, the claimant worked 31 hours for his current employer and reported \$344.00 in wages when he filed his weekly claim and received \$129.00. He did not make two job contacts that week because he was working the majority of the week.

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".

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant did not do a work search for the week ending December 30, 2006, because he was working the majority of the week. Under the provisions of the above Administrative Code section, he was not able and available for that week because of the number of hours he was working. He is not eligible for benefits for that week as a result.

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 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 January 3, 2007, reference 01, is modified in favor of the respondent. Lawrence Yancey is not eligible for benefits for the week ending December 30, 2006. He is overpaid in the amount of \$129.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw