

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

VICTOR T JEFFERSON  
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REMEDY TEMPORARY SERVICES  
C/O FRICK UC EXPRESS  
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ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-08006-S2T  
OC: 11/02/03 R: 04  
Claimant: Respondent (4)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Remedy Temporary Services (employer) appealed a representative's July 20, 2004 decision (reference 08) that concluded Victor Jefferson (claimant) was eligible to receive unemployment insurance benefits as of July 13, 2004. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2004. The claimant participated personally. The employer participated by Kim Amandus, On-Site Manager.

#### 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 on January 5, 2004, as a full-time temporary general laborer. The claimant had no interruption in employment since his hire until July 4, 2004. The plant was closed from July 4 through 10, 2004. The claimant returned to his full-time work after the plant closure.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is still employed at the same hours and wages as his original contract for hire as of July 13, 2004. For the following reasons the administrative law judge concludes he was not.

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 hired as a full-time worker. He was still employed in a full-time position as was agreed to at the time he was hired on July 13, 2004. The claimant is considered unemployed during the plant closure. He is not disqualified from receiving unemployment insurance benefits during the plant closure from July 4 through July 10, 2004. After the closure, the claimant was still employed as a full-time worker and not eligible to receive 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.

The claimant has received benefits in the amount of \$1,129.00 since filing his claim herein and after he returned to work from the plant closure. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's July 20, 2004 decision (reference 08) is modified in favor of the appellant. The claimant is eligible to receive unemployment insurance benefits during the plant closure. He is disqualified for being unavailable for work after July 10, 2004, because he was fully employed. The claimant is overpaid benefits in the amount of \$1,129.00.

bas/smc