

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM ALVARADO
Claimant

APPEAL NO. 08A-UI-01019-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED CONTRACTORS INC
Employer

**OC: 10/14/07 R: 02
Claimant: Respondent (4)**

871 IAC 24.1(113)a – Whether Claimant is Temporarily Unemployed
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 22, 2008, reference 03, which held the claimant eligible to receive unemployment insurance benefits beginning December 21, 2007, upon a finding that the claimant was considered able and available for work as he was unemployed due to a short-term layoff. After due notice was issued, a telephone conference hearing was scheduled for and held on February 13, 2008. The claimant participated. Participating as a witness for the claimant was Jessica Rivera. The employer participated by Jerry Sanders, hearing representative, and Ashley McFarland. The official interpreter was Jesus Ojeda.

ISSUE:

The issues in this matter are whether the claimant was able and available for work during a temporary short-term layoff and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant began employment with United Contracts Inc. on August 8, 2007, and worked as a full-time bridge construction laborer. The claimant was temporarily laid off work on December 21, 2007, and was instructed to return to work on January 2, 2008. Due to weather conditions, work was not available until January 7, 2008. Mr. Alvarado was not available to return employment with United Contractors Inc. until January 14, 2008, as he had traveled to Mexico for personal reasons and upon return did not contact the employer to return to available employment until January 14, 2008. Work was available to the claimant and other bridge crew members resuming on January 7, 2008. All other bridge crew members reported for work and were aware that work was available.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that Mr. Alvarado was laid off work on a short-term layoff effective December 21, 2007, and continued to be laid off from work until January 7, 2008, when worked resumed. The claimant did not avail himself of available employment until January 14, 2008, for personal reasons, which included traveling to Mexico. The evidence establishes that all other bridge crew members were aware that work was available effective Monday, January 7, 2008; however, the claimant did not make himself available for work that was available to him until the following week, January 14, 2008.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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".

For the reasons stated herein, the administrative law judge concludes that the claimant was not able and available for work and was not on temporary layoff beginning January 7, 2008, and therefore is not eligible to receive unemployment insurance benefits after that date.

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.

Because claimant's temporary layoff came to an end on January 7, 2008, and the claimant did not return to available work until the following week January 14, 2008, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$232.00.

DECISION:

The representative's decision dated January 22, 2008, reference 03, is affirmed as modified. The claimant is eligible to receive unemployment insurance benefits beginning December 21, 2007, through January 7, 2008, because he was on a short-term layoff. The claimant is not eligible to receive unemployment insurance benefits the week ending January 12, 2008, when the short-term layoff had ended and the claimant did not return to available work. The claimant is overpaid unemployment insurance benefits in the amount of \$232.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw