

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

RONALD K GENKINGER
1302 E 2ND ST
WASHINGTON IA 52353

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

ROBERT SCHLEGEL
ATTORNEY AT LAW
PO BOX 929
WASHINGTON IA 52353

Appeal Number: 04A-UI-06037-H2T
OC 02-08-04 R 03
Claimant: Appellant (3)

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 96.4-3 - Able and Available/Work Search
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 26, 2004, reference 01, decision. The decision warned that the claimant may be disqualified for future weeks in which benefits are claimed and fewer than two in-person job contacts are made. After due notice was issued, a hearing was held on June 28, 2004. The claimant did participate in the hearing and was represented by Robert Schlegel, Attorney at Law.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of February 8, 2004. During the week ending May 22, 2004, the claimant failed to conduct at least two in-person work searches because he was on vacation. The claimant was out of the state on vacation from May 16, 2004 through May 23, 2004. The claimant received unemployment insurance benefits for the week ending May 22, 2004 in the amount of \$300.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the warning should be removed from the claimant's record.

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 is obligated to make at least two in-person work searches during each week benefits are claimed. The claimant failed to do so. Accordingly, the warning was appropriate.

The question is whether the claimant was able to and available for work for the week ending May 22, 2004.

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(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant was out of town the majority of the workweek ending May 22, 2004 on vacation. Because the claimant was not in the labor market for the majority of the week ending May 22, 2004, he was not able to and available for work the week ending May 22, 2004.

The claimant was paid unemployment insurance benefits for the week ending May 22, 2004. Because the claimant was not able to and available for work that week, benefits were paid to the claimant to which he was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

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.

DECISION:

The May 26, 2004, reference 01, decision is modified in favor of the respondent. The decision warning the claimant to conduct at least two in-person work searches during each week benefits are claimed was appropriate. The claimant is not able to work and available for work effective for the one week period ending May 22, 2004. Benefits are denied for the one-week period ending May 22, 2004. The claimant is overpaid benefits in the amount of \$300.00.

tkh/kjf