

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

PAUL W DECASTRO
APT 12A
1800 S 4TH AVE E
NEWTON IA 50208-4081

INTELISTAF HEALTHCARE INC
C/o TALX UCM SERVICES
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 06A-UI-07726-HT
OC: 06/11/06 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer, Intelistaf, filed an appeal from a decision dated July 21, 2006, reference 03. The decision allowed benefits to the claimant, Paul DeCastro. After due notice was issued, a hearing was held by telephone conference call on August 17, 2006. The claimant participated on his own behalf. The employer participated by Area Manager Beth Betz.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Paul DeCastro began employment with Intelistaf on May 5, 2005. He is a temporary certified nursing assistant working individual shifts for clients.

As a healthcare worker, he is required to have a health certification updated every year, along with a tuberculosis (TB) test.

Mr. DeCastro's last assignment was at the Veteran's Hospital on May 30, 2006. At that time, he already had updated his yearly in-service and skills checklist requirements, but his physical and TB tests were not done and the previous exams expired on June 22, 2006. The employer left messages for him throughout the month of June reminding him he needed the updated health and TB certifications.

The claimant's vehicle became too unreliable to use around the first of July 2006. He did get a ride with another person to Knoxville on July 6, 2006, where he had a physical at the Veteran's Hospital. He was not able to get the final certifications because the various doctors had not yet compiled their reports. After that, due to new protocols, the report had to be picked up in person and could not be sent by mail. The claimant was without transportation and has not picked up the report or supplied it to the employer. For the same reason, he has not gotten a the TB test because it has to be checked 24 hours after being given, and he was not able to return to Knoxville the next day.

Mr. DeCastro's car remains too unreliable to use and he cannot accept assignments from Intelistaf because of this.

Paul DeCastro has received unemployment benefits since filing a claim with an effective date of June 11, 2006.

REASONING AND CONCLUSIONS OF LAW:

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

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(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not

be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

The claimant is not able and available for work beginning June 22, 2006, when his previous health certification and TB tests expired. The employer cannot assign him to work in medical facilities without these. He remains unavailable due to this and also because he lacks reliable transportation to any assignments, and is not eligible for unemployment benefits.

DECISION:

The representative's decision of July 21, 2006, reference 03, is modified in favor of the employer. Paul DeCastro is eligible for benefits for the two-week period ending June 24, 2006. After that he is not able and available for work due his health and TB certifications expiring and, as of July 1, 2006, because of lack of transportation. He is overpaid in the amount of \$658.00.

bgh/kjw