

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAVARES R JOHNSON**

Claimant

**APPEAL NO: 10A-EUCU-00674-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMCO ENTERPRISES INC**

Employer

**OC: 08/30/09**

**Claimant: Respondent (2)**

Section 96.5-3-a – Refusal to Return to Work  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed a representative's July 26, 2010 decision (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge even though the claimant did not return to work when the employer recalled him. A telephone hearing was held on September 18, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Jacqueline Jones, a TALX representative, appeared on the employer's behalf. Mary Halverson, a senior human resource generalist, testified on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant refuse to return to work after the employer recalled him?

As of April 4, 2010, has the claimant been overpaid any benefits?

**FINDINGS OF FACT:**

The claimant started working for employer as a full-time production employee on May 25, 2007. When he was hired, the claimant received a copy of the employer's policies. The policy informed employees that a failure to report to work within five days after being notified by certified mail to return to work after a layoff results in an employee's discharge. (Employer Exhibit One.)

During his employment, the claimant has been on several layoffs. After taking some vacation days, March 3 through 8, the claimant was on a temporary layoff on March 9, 2010. In late March, the employer called the claimant and left him messages about returning to work. On March 31, 2010, the employer sent the claimant a certified letter. The letter told the claimant he was being recalled and needed to report to work on April 5, 2010. The claimant did not report to work or contact the employer.

The claimant filed claims for the weeks ending April 10 through August 28, 2010. He received Emergency Unemployment Compensation benefits, his maximum weekly benefit amount of \$220.00, for each of these weeks.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he declines an offer of suitable work. Iowa Code § 96.5-3-a. If a claimant who is on a layoff for lack of work, fails to accept work offered by the employer on recall constitutes a refusal of suitable work. The disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. 871 IAC 24.24(2)b.

Based on the evidence presented during the hearing, the employer sent a certified letter to the claimant's last-known address on March 31, 2010, asking him to return to work on April 5, 2010. Since the claimant did not participate in the hearing, it is not known why he did not return to work. A preponderance of the evidence establishes the claimant failed to return to work when the employer recalled him while he was on layoff. Therefore, as of April 4, 2010, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits as of April 4, 2010. Since he filed for and received benefits since April 4, 2010, he has been overpaid a total of \$4,400.00 in Emergency Compensation benefits.

(Although Employer's Exhibit Three was admitted as evidence, this document is not what the employer purported it was. The document the employer submitted is a copy of a certified receipt for March 9, 2009, NOT March 31, 2010. As a result, Employer Exhibit Three was not considered as evidence in this decision.)

**DECISION:**

The representative's July 26, 2010 decision (reference 03) is reversed. The claimant refused to return to work when the employer recalled him from a layoff. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. As a result of this disqualification, the claimant has been overpaid and must repay a total of \$4,400.00 in Emergency Unemployment Compensation benefits he received for the weeks ending April 10 through August 28, 2010.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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