

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL D STOEVER
Claimant

APPEAL NO. 08A-UI-02215-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VUGTEVEEN LAWN SERVICE INC
Employer

**OC: 10/14/07 R: 01
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 25, 2008, reference 02, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on March 20, 2008. Claimant participated personally. Employer participated by Kevin Vugteveen, Owner.

ISSUE:

The issue in this matter is whether claimant is able and available for work. The second issue is whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works winters removing snow. Claimant called in for two days of work on January 22, 2008 and January 23, 2008. Claimant overslept the first day and was in jail on the second. Claimant refused work for the two days that were available for the week ending January 26, 2008. Claimant did not call the employer upon release from confinement to indicate he was available for work. Claimant called in the next time it snowed.

REASONING AND CONCLUSIONS OF LAW:

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".

Inasmuch as the claimant was absent due to incarceration and oversleeping he was not able and available for work for the one week ending January 26, 2008. Benefits are withheld for the one week ending January 26, 2008.

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 administrative law judge concludes that claimant is overpaid unemployment insurance benefits in the amount of \$144.00 pursuant to Iowa Code section 96.3-7 as claimant has been found not able and available for the one week ending January 26, 2008.

DECISION:

The decision of the representative dated February 25 2008, reference 02 is reversed. Claimant is not eligible to receive unemployment insurance benefits for the one week, effective January 26, 2008. Claimant is eligible for benefits effective January 27, 2008 and ongoing provided other eligibility requirements are met. Claimant is overpaid unemployment insurance benefits in the amount of \$144.00.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs