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

JUAN J CURI
LOT 28
425 – 7TH AVE NE
PLAINVIEW MN 55964-1275

LABOR READY
903 – 6TH ST NW
ROCHESTER MN 55903

Appeal Number: 06A-UI-00554-LT
OC: 12-18-05   R: 12
Claimant: Respondent (4)

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)

Iowa Code § 96.4(3) - Able and Available
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the January 12, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 1, 2006. Claimant did respond to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer did participate through Sheila Cada.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a day laborer for Labor Ready, and his last day of work was January 1, 2006, he then left to go to Iowa for another job. He returned and Labor Ready put him back to work on February 12, 2006. He had worked day labor on December 14, 15, and 16 before he had

car problems for a week. He also worked December 23, 27, 29, 30, and 31, 2005. Had he not left on January 1, that job had work available through the rest of January 2006.

The claimant has received unemployment benefits since filing a claim with an effective date of December 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work.

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 24.22(2) provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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).

871 IAC 24.23(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

Claimant was not available for work the week ending December 24, 2005, when he reported wages of $38.00 and received benefits of $281.00, as he had transportation problems. He was available to work and did so during the week ending December 31, 2005. From January 1, 2006 through February 12, 2006, claimant was out of the geographical area and was not available for work. During that time, he reported $51.00 in wages and was paid $562.00. Accordingly, benefits are denied for the week ending December 24, 2005, and the four weeks ending January 28, 2005, and claimant is overpaid $843.00 for those weeks. Partial benefits are allowed for the week ending December 31, 2005.

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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 12, 2006, reference 01, decision is modified in favor of the appellant. The claimant was not available for work the week ending December 24, 2005, and again from January 1, 2006 through February 12, 2006. Claimant was available for work the week ending December 31, 2005. The claimant is overpaid benefits in the amount of $843.00.

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