

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

ERIC M IVANOVICH
1101 AMOS AVE
DES MOINES IA 50315

FORREST & ASSOCIATE
817 S W 9TH ST
DES MOINES IA 50309-4579

AMENDED

Appeal Number: 06A-UI-00976-SWT
OC: 01/30/05 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 to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 24, 2006, reference 01, that concluded the claimant was able to and available for work. A telephone hearing was held on February 13, 2006. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Ron Shannon participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time as a laborer for the employer from May 2003 to December 13, 2005. During the winter months, work is irregular due to weather conditions, which the claimant would have known was normal in the masonry industry.

On December 13, 2005, the claimant was temporarily unemployed because of weather. He was told to keep in contact with the project coordinator. After that week, the claimant could have returned to work on one of several on-going projects the employer had, but he did not report to work or contact anyone in management. The project coordinator tried contacting the phone numbers the claimant had given the employer but could not reach him.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of December 25, 2005. The claimant filed for and received a total of \$897.00 in unemployment insurance benefits for the weeks between December 25, 2005, and January 14, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The rules provide that a person on temporary layoff from employer is unavailable for work if, had the person been willing to work, the employer would have had work available for him. 871 IAC 23(41). Under this rule, the claimant was unavailable for work starting the week of December 18, 2005.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective December 25, 2005, and was overpaid \$897.00 in benefits for the weeks between December 25, 2005, and January 14, 2006.

DECISION:

The unemployment insurance decision dated January 24, 2006, reference 01, is reversed. The claimant is disqualified effective December 25, 2005, and continuing until he refiles for unemployment insurance benefits and establishes he is available for work. The claimant was overpaid \$897.00 in unemployment insurance benefits, which must be repaid.

saw/kjw/kjw