

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID D LEWIS**

Claimant

**APPEAL NO. 06A-UI-09792-NT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**IOWA STEEL & WIRE CO**

Employer

**OC: 05/26/06 R: 03  
Claimant: Respondent (2)**

Section.96.4-3 – Able and Available

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 3, 2006, reference 03, that concluded the claimant was available for his regular hours of work. A telephone hearing was held on October 18, 2006. The parties were properly notified about the hearing. The claimant by telephone participated in the hearing. Although notified, the employer did not participate in the hearing.

**ISSUE:**

Was the claimant available for scheduled work with his regular employer the major portion of the benefit week claimed?

**FINDINGS OF FACT:**

Having reviewed all the evidence in the record, the administrative law judge finds the following facts: Mr. Lewis began employment with the captioned company on August 18, 2006, and continued to be employed by the company at the time of hearing. The claimant works as a floater and is paid by the hour. Although the claimant usually works 40 hours per week, he is classified as a part-time employee by the company due to the length of his employment.

For the week beginning September 3, 2006, Mr. Lewis did not work Monday, September 4 because it was a holiday and the company was closed. He was not paid holiday pay because he did not yet qualify. On Tuesday, September 5, Mr. Lewis did not work because he requested time off to attend a family funeral. He was not paid for the time because of his new status with the company and because of the distance in relationship. Mr. Lewis worked his scheduled hours on Wednesday, September 6. The claimant did not work Thursday, September 7, or Friday, September 8, because he had requested to be off work for personal reasons.

## **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the claimant was available for work during the week beginning September 3, 2006, within the meaning of the Iowa Employment Security Law. He was not.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The evidence in the record establishes that Mr. Lewis did not perform services for this employer the majority of the week in question because he had chosen to absent himself from available work for personal reasons. Mr. Lewis had not made himself available to work three of the four workdays that were available to him that week. As the claimant was not willing to work during the hours/days available and previously established, the administrative law judge finds that the claimant was not available for work for the week beginning September 4, 2006, and is not entitled to unemployment insurance benefits beginning that week.

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 claimant has received benefits for which he was not eligible.

**DECISION:**

The unemployment insurance decision dated October 3, 2006, reference 03, is reversed. The claimant was not available for work for the week beginning September 4, 2006, and is not eligible for unemployment insurance benefits. The claimant has been overpaid \$264.00.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

tpn/kjw/pjs