

**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**

**JAMES D JORGENSEN  
206 – 3<sup>RD</sup> ST  
LORIMOR IA 50149-1003**

**DENNIS R MORGAN  
STONE WORKS  
2989 ST CHARLES RD  
ST CHARLES IA 50240-9720**

**Appeal Number: 06A-UI-02408-HT  
OC: 01/29/06 R: 03  
Claimant: Respondent (4-R)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Stone Works, filed an appeal from a decision dated February 21, 2006, reference 01. The decision allowed benefits to the claimant, James Jorgensen. After due notice was issued, a hearing was held by telephone conference call on March 20, 2006. The claimant provided a telephone number of (641) 344-8843. That number was dialed at 3:00 p.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 3:11 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Office Manager Melissa Morgan.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: James Jorgensen began employment with Stone Works on October 27, 2005. He was a part-time stone worker working between 20 and 35 hours per week.

From January 27 through February 7, 2006, the claimant was laid off due to a slow work period. He was to return to work on February 8, 2006, but was unable to work due to illness through the remainder of that week.

He was scheduled to resume his regular work schedule on February 14, 2006, but was a no-call/no-show to work starting with that day.

Mr. Jorgensen filed a claim for unemployment benefits with an effective date of January 29, 2006. He received benefits for two weeks ending February 11, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible for benefits. The judge concludes he is not.

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".

The claimant was able and available for work beginning January 29, 2006, when the claim was initially filed, until February 8, 2006. For the remainder of the week ending February 11, 2006, he was unavailable due to illness and cannot be considered able and available for work.

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 unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 21, 2006, reference 01, is modified in favor of the appellant. James Jorgensen is eligible for benefits for the one-week period ending February 4, 2006. However, he is not eligible for the week ending February 11, 2006. He is overpaid in the amount of \$218.00.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

bgh/kkf