

**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**

**MARTIN R MENTZER
1880 CAMDEN CT
DES MOINES IA 50320**

**GTL TRANSPORTATION INC
250 PRAIRIE DR
BONDURANT IA 50035**

**Appeal Number: 05A-UI-00519-HT
OC: 12/12/04 R: 02
Claimant: Respondent (2-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, 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 and Available.
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, GTL Transportation, Inc. (GTL), filed an appeal from a decision dated January 12, 2005, reference 01. The decision allowed benefits to the claimant, Martin Mentzer. After due notice was issued a hearing was held by telephone conference call on January 31, 2005. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Operations Supervisor Craig Middlestat.

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: Martin Mentzer was employed by GTL beginning December 1, 2004. He was hired as a part-time truck driver with no guarantee of a certain number of trips on a weekly basis. The claimant had worked for the company before and had made it clear he did not want to be dispatched on any trip which would require him to be out of town overnight. Operations Supervisor Craig Middlestat re-hired him with the understanding there was plenty of work but most of it would require him to be out of town overnight, and the one-day trips were not as plentiful. He agreed to those terms.

The claimant was given a company phone and told to call into the office every day to find out if there were any dispatches available. He would not call in on a daily basis and therefore missed some available one-day trips.

The claimant separated from this employment on or about January 11, 2005. This separation has not been adjudicated by the Claims Section.

Martin Mentzer has received unemployment benefits since filing a claim with an effective date of December 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. 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".

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

871 IAC 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant was not guaranteed a certain number of trips every week because the one-day trips were not as plentiful as the longer dispatches. He agreed to these terms and therefore must be considered to be working to the same extent as contemplated in his contract of hire. In addition, the record establishes he did not make himself available to his regular employer by calling in on a daily basis to check on available dispatches. He is not able and available for work and therefore ineligible to receive 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.

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 January 12, 2005, reference 01, is reversed. Martin Mentzer is not able and available for work and benefits are denied. He is overpaid in the amount of \$1,116.00.

The issue of whether the claimant's separation from this employment would disqualify him from receiving unemployment benefits is remanded to the Claims Section for determination.

bgh/pjs