

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN S CHAPMAN
Claimant

APPEAL NO. 06A-UI-09403-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMCO CORPORATION
Employer

OC: 07/02/06 R: 03
Claimant: Respondent (2)

Section 96.4-3 – Ability to and Availability for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kimco Corporation (employer) appealed a representative's September 14, 2006 decision (reference 01) that concluded Kevin S. Chapman (claimant) was eligible to receive unemployment insurance benefits as of August 13, 2006, because he was on a short-term layoff. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work as of August 13, 2006?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant was on vacation the week of August 7. During this week, the claimant learned his daughter needed medical treatment. Instead of returning to work the week of August 13, the claimant wanted to be with his child while she underwent medical treatment. The employer granted the claimant time off under the Family Medical Leave Act. The claimant's medical leave ends on October 27, 2006. The claimant plans to return to work on October 27.

The claimant reopened his claim for unemployment insurance benefits during the week of August 13, 2006. The claimant filed claims for the weeks ending August 19 through September 30, 2006. The claimant received his maximum weekly benefit amount of \$165.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. A leave of absence negotiated with the consent of both parties is deemed a period of voluntary unemployment and the claimant is considered ineligible to receive benefits during a leave of absence. 871 IAC 24.22(2)(j). Since the claimant requested and was granted a leave of absence under the Family Medical Leave Act, the law presumes the claimant is not eligible to receive benefits during the leave. Therefore, as of August 13, 2006, the claimant is not eligible to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending August 19 through September 30, 2006. The claimant has been overpaid \$1,155.00 in benefits he received for these weeks.

DECISION:

The representative's September 14, 2006 decision (reference 01) is reversed. The claimant requested and was granted a leave of absence from August 13 through October 27, 2006. The claimant is not eligible to receive benefits for these weeks because he voluntarily became unemployed. As of August 13, 2006, the claimant is not eligible to receive unemployment insurance benefits. The claimant is not legally entitled to receive benefits for the weeks ending August 19 through September 30, 2006. The claimant has been overpaid and must repay a total of \$1,155.00 in unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs