

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

EDWARD W TROUT
10140 FLORIS RD
ELDON IA 52554

DEERE & CO (01-E) OTTUMWA WORKS
PO BOX 617
OTTUMWA IA 52501

Appeal Number: 04A-UI-09871-DWT
OC: 09/07/03 R: 03
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 are 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 – Ability to and Availability for Work
Section 96.3-7- Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Deere & Company (01-E) Ottumwa Works (employer) appealed a representative's September 10, 2004 decision (reference 01) that concluded Edward W. Trout (claimant) was eligible to receive unemployment insurance benefits 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 5, 2004. The claimant participated in the hearing with Darrell Belzer, a union representative, representing him. Carl Phipps, a co-worker, Mike Hootman were also present on the claimant's behalf. Larry Jarvis, David Lindell and John Roloff appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant able to and available for work for the week ending August 21, 2004?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant has worked for the employer since March 13, 2000. He still works for the employer as a full-time painter. The claimant is also a union representative.

The week of July 26, 2004, the employer posted the names of employees who would be laid off for inventory adjustments in August. The claimant's name was on the list, which indicated he would be on a layoff the weeks of August 15 and 22. The week of August 8, the claimant was not working because the employer had approved his request for vacation. The claimant was on vacation this week.

During the latter part of the week of August 1, the employer told a co-worker, C.P., he would be working the week of August 8, but the employer did not know what would happen the next week. The claimant was present during this conversation. If C.P. worked in his usual department the week of August 15, the claimant would be working because a union representative had to work in any department a co-worker worked. When the claimant went on vacation, he had no idea the employer wanted him to return to work the week of August 15.

The week of August 15, C.P. worked in his regular department, the claimant's department. The employer tried to contact the claimant so he could return to work. The employer was unable to successfully contact the claimant. On August 19, the employer asked the claimant's union to contact the claimant. The claimant was not available to work the week ending August 21 because he was out of state. The claimant returned on August 23 and worked.

The claimant reopened his claim for benefits during the week of August 15, 2004. The claimant filed a claim for benefits for the week ending August 21, 2004. He received \$322.00 in benefits for this week.

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 §96.4-3. The law presumes a claimant is not able to and available for work when he is out of town for personal reasons for the major portion of the workweek and is not in the labor market. 871 IAC 24.23(25).

The facts establish the claimant was out of town the week of August 15 for personal reasons. The claimant did not make any arrangements to keep in contact with the employer during his layoff so the employer could not call him back to work. The claimant's failure to remain in contact prevented the employer from contacting him so the employer could let him know he was to return to work that week. During the week ending August 21, 2004, the claimant is not eligible to receive benefits because he was able to and available for work.

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 §96.3-7. The claimant is not legally entitled to receive unemployment

insurance benefits for the week ending August 21, 2004. The claimant has been overpaid \$322.00 in benefits he received for this week.

DECISION:

The representative's September 10, 2004 decision (reference 01) is reversed. The claimant was not able to and available for work the week ending August 21, 2004 because he was out of town for personal reasons. Therefore, the claimant is not eligible to receive benefits for this week. He has been overpaid a total of \$322.00 in benefits he received for the week ending August 21, 2004.

dlw/kjf