

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

LEV VALD  
4707 – 101<sup>ST</sup> ST  
URBANDALE IA 50322

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-02326-DT  
OC: 02/20/05 R: 02  
Claimant: Appellant (1/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 96.4-4 - Second Benefit Year Qualification

STATEMENT OF THE CASE:

Lev Vald (claimant) appealed a representative's March 2, 2005 decision (reference 01) that concluded the claimant was not eligible to receive unemployment insurance benefits for a second benefit year because the claimant had not been paid insured wages of at least \$250.00. After a hearing notice was mailed to the claimant's last-known addresses of record, a telephone hearing was held on March 23, 2005. The claimant participated in the hearing. 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.

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits for a claim year beginning February 22, 2004, ending February 20, 2005. He filed a subsequent claim during the week ending February 26, 2006. From May 25, 2004 through August 31, 2004, the claimant worked at Mediacom doing technical support in an office on an hourly, 8:00 a.m. to 5:00 p.m., basis under the supervision of a supervisor; he believed he was an employee. However, Mediacom did not withhold income taxes, and in January 2005 sent him a 1099 form reporting his pay not as wages but as miscellaneous income. Mediacom did not report having paid any wages to the claimant in the second or third quarters of 2004.

Another representative's decision, virtually identical to the March 2, 2005, reference 01, decision under consideration in this appeal, was issued on March 21, 2005 as reference 04. Even though it is clear that Mediacom treated the claimant as an independent contractor, it does not appear that there has been any appealable decision issued by the Agency addressing the specific issue as to whether the claimant truly was an independent contractor or whether he in fact had an employer/employee relationship with Mediacom despite Mediacom's apparent intention that he be an independent contractor.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible to receive unemployment insurance benefits for a second benefit year. Iowa Code section 96.4-4 provides that if an individual has drawn benefits in any benefit year, the individual must, during or subsequent to that year, work in and be paid wages totaling at least in wages from \$250.00 insured work as a condition to receive benefits in the next benefit year. "Insured work" is work performed by an employee for an employer, and does not include independent contractor income. Iowa Code §96.19; 871 IAC 24.1. The evidence presented shows that to this point, until or unless a determination is made that the claimant's relationship with Mediacom was that of employer/employee rather than independent contractor, he was not earned at least \$250.00 in wages from insured work.

The issue as to whether the claimant was an employee of Mediacom and not an independent contract was not included in the notice of hearing for this case, and the administrative law judge does not have jurisdiction over that determination. The case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's March 2, 2005 decision (reference 01) is affirmed. The claimant is not presently entitled to receive unemployment insurance benefits during the claim year beginning the week ending February 26, 2005. The matter is remanded to the Tax Unit for investigation and determination of the employer/employee versus independent contractor issue.

ld/tjc