

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

MICHEL J PARROTT
1510 FIRST AVE LOT #41
GRINNELL IA 50112

ULTIMATE ELECTRONICS INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006 9000

Appeal Number: 04A-UI-12609-DWT
OC: 08/29/04 R: 02
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:

Ultimate Electronics, Inc. (employer) appealed a representative's November 18, 2004 decision (reference 05) that concluded Michel J. Parrott (claimant) was qualified to receive unemployment insurance benefits even though he declined the employer's offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2004. The claimant participated in the hearing. Michelle Hawkins, a representative with Employers Unity, Inc., appeared on the employer's behalf with Eli Bateman, the employer's witness. 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:

As of October 24, 2004, is the claimant able to and available for work?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of August 29, 2004. When the claimant applied for a job with the employer, he had reliable transportation to travel about 120 miles per day for a job. The claimant has previously worked in Grinnell and anywhere from 25 to 60 miles from his home. The claimant knew the employer paid him a straight commission, which he had some concerns about. The claimant did not understand the employer guaranteed him a minimum of \$7.70 per hour.

The claimant accepted a job with the employer and completed the employer's pre-employment drug test. The claimant was scheduled to attend a two-week training class in Minnesota starting on October 25, 2004. Right before the claimant was to go to Minnesota, the engine in his vehicle went out. The claimant was unable to attend this training because he had no way to get to the training class. The claimant contacted the store manager who had hired him and told him he was unable to work for the employer because he no longer had reliable transportation. The claimant did not earn any wages or commissions from the employer.

As of December 16, 2004, the claimant still did not have any transportation. He is looking for work in the Grinnell area and in areas where he can ride with another person to work. The claimant limits his work search to Grinnell and 10 to 15 miles from Grinnell.

The claimant filed claims for the weeks ending October 30 through December 11, 2004. He received his maximum weekly benefit amount of \$310.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

Since the claimant did not actually work and earn any wages, the claimant did not quit for unemployment insurance purposes. Instead, he declined the employer's employment. Before a claimant can be disqualified from receiving benefits for refusing to accept suitable work, a claimant must be able to and available for work. 871 IAC 24.24(4). Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code §96.4-3.

Even though the claimant is looking for work 10 to 15 miles from his home, he is looking for a tailor-made job because he has restricted his employment search to an area where he can ride to work with someone from Grinnell. Given the time in which the claimant has been unemployed and accepted a job 60 miles from his home in late October, the claimant's lack of transportation restricts his availability to work and obtain other employment. Therefore, as of October 24, 2004, the claimant is not eligible to receive unemployment insurance 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 §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 30 through December 11, 2004. The claimant has been overpaid \$2,170.00 in benefits he received for these weeks.

DECISION:

The representative's November 18, 2004 decision (reference 05) is reversed. The claimant is not eligible to receive unemployment insurance benefits as of October 24, 2004, because his lack of transportation has restricted his availability of where he can work. The claimant is ineligible to receive unemployment insurance benefits until he replies and provides evidence that he is not restricting his availability to work to just 10 to 15 miles from his home. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 30 through December 11, 2004. The claimant has been overpaid and must repay a total of \$2,170.00 in benefits he received for these weeks.

dlw/b