

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

CYNTHIA K NEWBOLD
320 S FERRY
OTTUMWA IA 52501

CHIROPRACTIC HEALTH ASSOCIATES
c/o M W MANAGEMENT
3811 FIRETHORN CT
LINCOLN NE 68520

Appeal Number: 05A-UI-01312-CT
OC: 05/02/04 R: 03
Claimant: Appellant (4-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

STATEMENT OF THE CASE:

Cynthia Newbold filed an appeal from a representative's decision dated January 31, 2005, reference 02, which denied benefits on a finding that she was still employed by Chiropractic Health Associates under the same terms and conditions as hired. After due notice was issued, a hearing was held by telephone on February 22, 2005. Ms. Newbold participated personally. The employer participated by Kathy Moeller, Administrative Assistant, and Ashley Marshall, Insurance Clerk.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Newbold began working for Chiropractic Health Associates on August 3, 2004. She was hired to provide therapy and patient education. She was to work 40 hours each week during the training period of from two to four weeks and then 32 to 35 hours each week thereafter. Ms. Newbold filed an additional claim for job insurance benefits effective December 12, 2004 because she was not working as many hours as before.

Ms. Newbold worked approximately 28 hours the week ending December 18 but missed a full day of work on December 15. She worked 21 hours the week ending December 25 but was paid for the Christmas holiday for a total of 29 hours. For the week ending January 1, Ms. Newbold was paid for a total of approximately 33 hours, including 8 hours of holiday pay. During the following week ending January 8, she missed hours on January 5 and 6 because the office was closed. Ms. Newbold was told that she was not needed on January 11 and for a portion of the day on January 13, resulting in a loss of 11 hours for the week ending January 15. Thereafter, Ms. Newbold has worked at least 32 hours each week. She became separated from the employment on February 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Newbold is eligible to receive job insurance benefits on her additional claim filed effective December 12, 2004. Although she only worked 28 hours the week ending December 18, she could have worked additional hours had she not been absent on December 15. Because the work was available to her for the week, she is not entitled to benefits for the week. She was paid for 29 hours for the week ending December 25. Because she was paid for less than her normal workweek, benefits are allowed for the week. Benefits are denied for the week ending January 1 as Ms. Newbold was paid for 33 hours, consistent with the hours she was to receive. Benefits are allowed for the week ending January 8 as she missed 12 hours of work because the employer closed the office due to weather conditions. Benefits are also allowed for the week ending January 14 as Ms. Newbold missed 11 hours of work due to the fact that her services were not needed.

After considering all of the evidence, the administrative law judge concludes that Ms. Newbold is only entitled to receive job insurance benefits for the weeks ending December 25, January 8, and January 14 as these weeks were shortened at the employer's initiative. For other weeks, she either worked a minimum of 32 hours or missed available work for her own reasons. Ms. Newbold has now become permanently separated from the employment. This matter shall be remanded to Claims for an investigation and determination regarding the February 17, 2005 separation.

DECISION:

The representative's decision dated January 31, 2005, reference 02, is hereby modified. Ms. Newbold is allowed job insurance benefits for the weeks ending December 25, 2004, January 8, 2005, and January 14, 2005 as she was partially unemployed during those weeks. This matter is remanded to Claims for a determination regarding Ms. Newbold's February 17, 2005 separation from Chiropractic Health Associates.

cfc/pjs