

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

RONALD L SHAPNACK  
6930 NE 56<sup>TH</sup> ST LOT 96  
ALTOONA IA 50009

CHIEFTAIN CORPORATION  
KUM & CO  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-12014-SWT  
OC: 10/12/03 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, 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 96.4-3 - Able to and Available for Work  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 29, 2004, reference 04, that concluded he was eligible for unemployment insurance benefits because he was still working part time whenever work was available. A telephone hearing was held on December 15, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Sara Waugh. Brian Baumgardner participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time as a sales associate for the employer from February 10, 2004 to approximately September 12, 2004, when his doctor took him off work because of an injury he had sustained before he started to work for the employer.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of September 26, 2004, after his doctor excused him from working. The claimant returned to work for the employer sometime in October 2004. He filed weekly claims for the weeks ending October 2 and 9, 2004. During these two weeks, the claimant was not able to and available for work.

The claimant filed for and received a total of \$387.00 in unemployment insurance benefits for the weeks between September 26 and October 9, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by Iowa Code Section 96.4-3. Under the unemployment insurance rules, a person who has been certified by a doctor as not being able to work or who is on a leave of absence is considered unable to work and ineligible for benefits. 871 IAC 24.23(6) & (10). Although it is unfortunate that neither party was prepared to testify with confidence about when the claimant stopped working and when he returned to work, the preponderance of the evidence establishes that the claimant was not able to and available for work during the two weeks he filed for benefits between September 26 and October 9, 2004.

The claimant filed a new claim for unemployment insurance benefits during the week of December 5, 2004, after he was separated from employment with the employer. The employer protested that claim. The parties were offered the option of having that issue determined in this proceeding, but the claimant desired that the matter go through a fact-finding interview.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective September 26, 2004, and was overpaid \$387.00 in benefits for the weeks between September 26 and October 9, 2004.

#### DECISION:

The unemployment insurance decision dated October 29, 2004, reference 04, is reversed. The claimant is ineligible to receive unemployment insurance benefits from September 26 to October 9, 2004. The claimant was overpaid \$387.00 in unemployment insurance benefits, which must be repaid.

saw/b