

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

GERALD M WAGNER
3810 – 49TH AVE
MOLINE IL 61265

FREESTONE WALLS & CEILINGS INC
805 S 9TH AVE
ELDRIDGE IA 52748-2031

Appeal Number: 04A-UI-12442-CT
OC: 10/17/04 R: 12
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 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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Freestone Walls & Ceilings, Inc. (Freestone) filed an appeal from a representative's decision dated November 16, 2004, reference 01, which allowed benefits to Gerald Wagner but denied the employer relief from benefit charges. After due notice was issued, a hearing was held by telephone on December 13, 2004. Mr. Wagner participated personally. The employer participated by Kerry Skinner, President, and Robert Oster, Vice President.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Wagner began working for Freestone on August 4, 2003 as a full-time laborer. For health reasons, his doctor advised him to work part-time. Mr. Wagner decided to file for Social Security retirement benefits and only work part-time. The employer accommodated his request to become a part-time employee and reduced his hours as of September 9, 2004. Mr. Wagner is limited as to how much he can earn without having his retirement benefits reduced. He adjusted his hours at Freestone in order to not exceed the earnings limitations.

In November, Mr. Wagner left Freestone because he found other employment. The new employment pays him a higher per-hour wage than he was last earning at Freestone. He continues to limit his work activity so as not to exceed the earnings limitation imposed on his retirement benefits.

Mr. Wagner has received a total of \$1,770.00 in job insurance benefits since filing his claim effective October 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Wagner satisfied the availability requirements of Iowa Code section 96.4(3) as of the effective date of his claim for job insurance benefits, October 17, 2004. All of his base period wage credits were earned in full-time employment with Freestone. However, he is no longer available to work full time. Although his health is a factor in the decision to only work part-time, the primary factor is the earnings limit imposed by virtue of his receipt of retirement benefits. Where an individual limits work because he does not want to earn wages which would adversely effect Social Security benefits, the individual is not considered available for work within the meaning of the law. See 871 IAC 24.23(22). For the reasons cited herein, the administrative law judge concludes that Mr. Wagner was not eligible for job insurance benefits effective October 17, 2004. Although he is no longer with Freestone, he continues to limit his work activity and is not available to the same extent as he accrued wage credits.

Mr. Wagner has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated November 16, 2004, reference 01, is hereby reversed. Mr. Wagner is not available for work within the meaning of the law. Benefits are withheld until such time as he is available for work to the same extent as he accrued wage credits. Mr. Wagner has been overpaid \$1,770.00 in job insurance benefits.

cfc/smc