

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

DENISE M PINCHOTTI
400 LINDALE DR #56
MARION IA 52302

THE MAYTAG CO
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216 1160

Appeal Number: 05A-UI-11412-DWT
OC: 12/26/04 R: 03
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 – Availability for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The Maytag Company (employer) appealed a representative's October 28, 2005 decision (reference 01) that concluded Denise M. Pinchotti (claimant) was eligible to receive unemployment insurance benefits as of October 2, 2005 because she was not working the same number of hours she had worked during her base period and the employer's account was held subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2005. The claimant participated in the hearing and wanted a decision made based on information contained in the administrative record. No one on the employer's behalf participated in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible to receive benefits for the week ending October 8, 2005?

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 December 26, 2004. The employer did not protest the claimant's receipt of unemployment insurance benefits when she established her claim. During the week of October 2, the claimant's supervisor asked employees if they wanted to go home early. The claimant volunteered to leave work early even though there was work available for her to do and she could have stayed and worked.

The claimant reopened her claim for unemployment insurance benefits during the week of October 2. She filed a claim for benefits during this week. The claimant reported she had received \$310.00 in wages. The claimant received \$92.00 in benefits for the week ending October 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code §96.4-3. The facts establish the claimant could have worked, but chose to leave work early during the week ending October 8, 2005. Since the claimant was not available to work all the hours the employer had available for her to work, the claimant is not eligible to receive benefits for the week ending October 8, 2005.

If an individual receives benefits she 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 benefits for the week ending October 8, 2005, and has been overpaid \$92.00 she received in benefits for this week.

DECISION:

The representative's October 28, 2005 decision (reference 01) is reversed. The claimant was not available to work all the hours the employer had available for her to work during the week of October 2, 2005. The claimant is not legally entitled to receive benefits for the week ending October 8, 2005. The claimant has been overpaid \$92.00 in benefits she received for this week.

dlw/tjc