

**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**

**TABATHA A GRELK
104 S OAK #1
DONNELSON IA 52625**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 05O-UI-02135-DWT
OC: 07/04/04 R: 04
Claimant: Appellant (4)**

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 96.3-7 – Recovery of Overpayment of Benefits
Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Tabatha A. Grek (claimant) appealed a representative's a representative's November 24, 2004 decision (reference 06) that concluded she had been overpaid \$6,346.00 in unemployment insurance benefits she received for the weeks ending July 10 through November 13, 2004. The overpayment occurred as the result of a representative's November 23, 2004 decision that held the claimant ineligible to receive benefits as of July 4, 2004. A hearing was held on December 28, 2004. Based on the claimant's testimony, an administrative law judge affirmed the representative's November 23 and 24, 2004 decisions.

The claimant appealed the decision to the Employment Appeal Board because she asserted she was able to and available for work as of September 19, 2004. The Employment Appeal Board agreed the claimant was not eligible to receive benefits from July 4 through September 18, 2004. Since the overpayment covers July 4 through November 13, 2004, the

Employment Appeal Board remanded this matter to the Appeals Section to determine if the claimant was eligible to receive unemployment insurance benefits as of September 19 and whether she has been overpaid any benefits from September 19 through November 13, 2004.

After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on March 16, 2005. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, 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 as of September 19, 2004?

Has the claimant been overpaid benefits she received from September 19 through November 13, 2004?

FINDINGS OF FACT:

The claimant's doctor released her to return to work as of September 5, 2004. The claimant was not able to work until September 19 because her children were ill and her employer, Wal-Mart, approved some time off as vacation. Wal-Mart, however, terminated the claimant's employment as of September 19, 2004.

The claimant filed claims for the weeks ending September 25 through November 13, 2004. The claimant received her maximum weekly benefit amount of \$334.00 for each of these weeks.

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 was able to and available for work as of September 19, 2004.

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. Since the claimant is able to and available for work as of September 19, 2004, she is eligible to receive unemployment insurance benefits as of September 19, 2004. Therefore, the claimant has not been overpaid \$2,572.00 in benefits she received for the weeks ending September 25 through November 13, 2004.

(The claimant's separation from Wal-Mart was adjudicated a November 22, 2004, reference 01, decision, which concluded the reasons for the separation did not disqualify the claimant from receiving unemployment insurance benefits.)

DECISION:

The representative's November 24, 2004 decision (reference 06) is modified in the claimant's favor. The claimant is eligible to receive unemployment insurance benefits as of September 19, 2004. Therefore, the claimant is legally entitled to receive benefits as of September 19, 2004. She has not been overpaid \$2,572.00 in benefits she received for the weeks ending September 25 through November 13, 2004. If the claimant filed claims after November 13, she

is entitled to receive benefits for these weeks based on the issue of whether she was able to or available for work.

dlw/tjc