

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

JENNIFER L WALTERT
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PO BOX 724
STATE CENTER IA 50247

ABCM CORPORATION
PO BOX 436
HAMPTON IA 50441-0436

Appeal Number: 05A-UI-06079-CT
OC: 05/08/05 R: 02
Claimant: Appellant (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

STATEMENT OF THE CASE:

Jennifer Waltert filed an appeal from a representative's decision dated May 27, 2005, reference 02, which denied benefits on a finding that she was not available for work. After due notice was issued, a hearing was held by telephone on June 28, 2005. Ms. Waltert participated personally. The employer participated by Kristine Tomash, Provisional Administrator.

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. Waltert began working of ABCM Corporation in October of 2002 as a full-time aide. In June of 2004, she voluntarily changed her status to PRN,

meaning she would be asked to work when needed. As of the fall of 2004, she was considered a part-time worker. This means she would be provided no more than 32 hours of work each week.

Ms. Waltert missed 1 of 16 days she was scheduled to work in January of 2005; 3 of 16 days in February; and 8 of 11 days in March. Because of her attendance, the employer unilaterally decided to change her status to PRN. Ms. Waltert last worked on May 8. When she received the new schedule on May 9, she noted that she was not scheduled for any hours. She has not been provided work since May 8, 2005. Ms. Waltert filed a claim for job insurance benefits effective May 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Waltert has satisfied the availability requirements of Iowa Code section 96.4(3) since filing her claim effective May 8, 2005. It was the employer's decision that she would be a PRN employee rather than a regular employee. Ms. Waltert's request to be PRN was in the summer of 2004 but, she subsequently went to part-time status. Although she was considered a PRN employee in May of 2005, she has not been offered any work since May 8. She has not quit and the employer has not notified her that she has been discharged.

The fact that Ms. Waltert had periodic absences does not establish that she was unwilling to work the hours the employer had available for her. Her absences were due either to her own illness or that of a family member, except for one day when she attended an event at her child's school. Inasmuch as Ms. Waltert continued to be available to work for the employer, she is considered available for work within the meaning of the law. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 27, 2005, reference 02, is hereby reversed. Ms. Waltert has satisfied the availability requirements of the law since May 8, 2005. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs