

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

FLOYD F SHINKLE JR
Claimant

APPEAL NO. 07A-UI-01503-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP
Employer

**OC: 12/24/06 R: 03
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wellman Dynamics Corporation (Wellman) filed an appeal from a representative's decision dated February 1, 2007, reference 02, which held that no disqualification would be imposed regarding Floyd Shinkle's December 27, 2006 refusal of work. After due notice was issued, a hearing was held by telephone on February 27, 2007. The employer participated by Becky Young and Nicole Bierle, Human Resources, and Joe Williamson, Foundry Manager. The employer was represented by Dorothy Hayes of NSN Employer Services, Inc. Exhibit One was admitted on the employer's behalf. Mr. Shinkle did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Shinkle was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Shinkle has been employed by Wellman since January 23, 2006 as a full-time core maker. On November 27, 2006, the employer posted a notice on the employee bulletin board in the main entryway advising employees of the availability of work during an upcoming shutdown. The shutdown began December 27 and employees returned to work on January 3, 2007. The employer had work available on December 27, 28, and 29. The available work did not require any skills Mr. Shinkle did not already have. The work was for the same shift, the same number or hours, and the same rate of pay as he had been receiving. Mr. Shinkle declined the work.

Mr. Shinkle filed a claim for job insurance benefits effective December 24, 2006. He was paid \$220.00 in job insurance benefits for the week ending December 30, 2006.

REASONING AND CONCLUSIONS OF LAW:

Wellman was on shut-down on December 27, 28, and 29. Ordinarily, an individual who is on a temporary layoff is exempt from the availability requirements of Iowa Code section 96.4(3). However, the individual must remain available to the employer that laid him off. Mr. Shinkle had the choice to work December 27 through 29. Had he chosen to work, he would have received his normal pay for the same number of hours he would have worked had there not been a shutdown. Because he declined the work, the administrative law judge must conclude that he was not available for work. See 871 IAC 24.23(41). Therefore, Mr. Shinkle was not eligible to receive job insurance benefits for the period of the shutdown.

Mr. Shinkle received benefits for the week ending December 30, 2006. 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 February 1, 2007, reference 02, is hereby reversed. Mr. Shinkle was not eligible for job insurance benefits for the week ending December 30, 2006 as he was not available for work with the employer that laid him off. He has been overpaid \$220.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css