

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGO MILLIKAN
Claimant

APPEAL NO. 08A-UI-01407-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX MANUFACTURING INC
Employer

OC: 10/28/07 R: 02
Claimant: Respondent (2)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Lennox Manufacturing (employer) appealed an unemployment insurance decision dated February 8, 2008, reference 01, which held that Margo Millikan (claimant) was not eligible for unemployment insurance benefits because she was working for the same hours and wages as in her original contract of hire with her employer. Due notice was issued scheduling the matter for a telephone hearing to be held February 25, 2008. Because there was no dispute of material facts, a decision could be made based on the record as it stood and a hearing was deemed unnecessary.

ISSUE:

The issue is whether the claimant is able and available to work?

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The decision from which the employer appealed incorrectly concluded the claimant was still employed for the same hours and wages as in her original contract of hire with the employer and could not be considered partially unemployed. The parties agree the claimant was laid off from employment from August 13, 2007 through January 5, 2008. The employer does not protest the claimant's unemployment insurance benefits during her layoff period.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant meets the availability requirements.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially

unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The evidence establishes the claimant was laid off by the employer on August 13, 2007 and returned to work on January 7, 2008. The employer does not protest the claimant's unemployment insurance benefits during the lay-off period. The claimant meets the availability requirements from August 13, 2007 through January 5, 2008. Benefits are allowed for this same time frame.

DECISION:

The unemployment insurance decision dated February 8, 2008, reference 01, is reversed. The claimant qualifies for unemployment insurance benefits from August 18, 2007 through January 5, 2008, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw