

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BOBBIE S CONLEY Claimant IOWA WORKFORCE DEVELOPMENT DEPARTMENT	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 07A-UI-06035-JTT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 12/24/06 R: 06 Claimant: Appellant (1)</div>
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Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Bobbie Conley filed a timely appeal from the June 5, 2007, reference 06, decision that denied benefits effective March 1, 2007 based on a determination that Ms. Conley was not able to work. After due notice was issued, a hearing was held on July 3, 2007. Claimant participated. The administrative law judge received Claimant's Exhibit A and Department Exhibits D-1, D-2, and D-3 into evidence. The administrative law judge took official notice of the Agency's record of benefits paid to the claimant.

ISSUE:

Whether the claimant has been able to work and available for work since March 1, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bobbie Conley established a claim for benefits that was effective December 24, 2006. In connection with the original claim, Ms. Conley claimed and received benefits only for the week ending December 30, 2006. Ms. Conley did not claim additional benefits until she established an Additional Claim for benefits that was effective May 20, 2007. On June 5, 2007, a Workforce Development representative entered a reference 04 decision that Ms. Conley was eligible for benefits, provided she was otherwise eligible, based on a non-disqualifying discharge from Wellman Dynamics Corporation on January 26, 2007. The employer did not appeal the reference 04 decision and it became a final Agency decision. Ms. Conley had actually gone back to work for Wellman Dynamics on February 22, but recommenced a leave of absence on February 26, 2007 so that she could care for her father. Ms. Conley's father had been diagnosed with cancer and had been hospitalized since January. Ms. Conley did not return to the employment on the agreed upon return date of March 2, 2007, and a second separation from the employer occurred. Before Ms. Conley's most recent separation from the employment at Wellman Dynamics, Ms. Conley commenced staying with her father at the hospital so that she could assist with her father's care. Ms. Conley continued to live with her father at the hospital until her father was discharged from the hospital to home on May 13, 2007. Ms. Conley did not seek employment during this period. After Ms. Conley's father transitioned home, Ms. Conley continued to care for her father on a full-time basis. Ms. Conley's mother works

third-shift hours and sleeps during the day. Ms. Conley has cared for her father during the day while her mother is sleeping. On July 2, Ms. Conley's family received word that Ms. Conley's father's cancer is in remission. Until Ms. Conley received word of the remission, she continued to care for her father on a full-time basis.

Ms. Conley's base period employment with Wellman Dynamics was full-time, first shift employment. During the week ending May 26, Ms. Conley made one job contact by telephone for a part-time restaurant position. During the week ending June 2, Ms. Conley made two job contacts by telephone. One of those telephone contacts was Wellman Dynamics. Both telephone contacts concerned full-time positions. Ms. Conley made one in-person job contact for a full-time position at Subway. During the week that ended June 9, Ms. Conley reapplied at Subway in person, applied in person for a part-time position at Casey's, and applied over the phone for a part-time position at Atlantic Henningson Construction. During the week that ended June 16, Ms. Conley inquired about a laundry aid position by telephone, but did not further pursue the position because it did not seem interesting. Ms. Conley contacted Coffee Shack by telephone regarding a full-time position. During the week that ended June 23, Ms. Conley recontacted Casey's by telephone and contacted a factory by phone regarding a full-time position. During the week that ended June 30, Ms. Conley contacted Dollar Store by telephone regarding a full-time position. Ms. Conley also applied in person for a full-time manager position at Taco Johns. At the time of the hearing on July 3, Ms. Conley had made no job contacts for the week of July 1-7.

Ms. Conley continues to provide assistance for her father on a part-time basis and cares for her three children.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required

to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The greater weight of the evidence in the record indicates that Ms. Conley has not been available for work or made an active and earnest search for work since separating from Wellman Dynamics on February 26, 2007 or since establishing her Additional Claim for benefits. Ms. Conley is ineligible for benefits effective February 26, 2007 and will continue to be ineligible for benefits until she demonstrates an active and earnest search for employment, which would include making the required in-person contacts for full-time employment.

DECISION:

The Agency representative's June 5, 2007, reference 06, decision is affirmed. The claimant has not been available for work or actively and earnestly searched for work since February 26, 2007. Accordingly, the claimant is not eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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