

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LATISHA G WILLIAMS-ROJAS**

Claimant

**APPEAL NO. 08O-UI-00989-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRIMM BROTHERS PLASTICS CORP**

Employer

**OC: 01/28/07 R: 04  
Claimant: Respondent (1-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Grimm Brothers Plastics Corporation (Grimm) filed an appeal from a representative's decision dated November 8, 2007, reference 03, which allowed benefits to Latisha Williams-Rojas. After due notice was issued, a hearing was held by telephone on November 30, 2007. The November 30, 2007 decision of the administrative law judge reversed the allowance and assessed an overpayment. Ms. Williams-Rojas filed a further appeal to the Employment Appeal Board. In its decision issued January 24, 2008, the Employment Appeal Board reversed the administrative law judge's decision after finding that no separation from employment had occurred. The matter was remanded to an administrative law judge on the issue of whether Ms. Williams-Rojas satisfied the availability requirements of the law and whether she was partially unemployed.

Pursuant to the order of remand, due notice was issued scheduling the matter for a hearing on February 12, 2008. Ms. Williams-Rojas participated personally and was represented by Toby Gordon, Attorney at Law. The employer participated by Linda Wilson, Human Resources Manager, and Nick Zaugg, Manufacturing Manager. The employer was represented by Joseph Laverty, Attorney at Law. The hearing was recessed and concluded on March 13, 2008. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Williams-Rojas has satisfied the availability requirements of the law since filing her additional claim for job insurance benefits effective October 14, 2007.

**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: Ms. Williams-Rojas began working for Grimm on July 16, 2007. She was hired to work full time as a CNC router operator. She was a student at the time of hire and was only available to work night hours. She was assigned to a shift working from 7:00 p.m. until 6:30 a.m.

On or about October 10, Ms. Williams-Rojas presented the employer with notice that she had restrictions regarding work activities. The restrictions were the result of a back injury she sustained on October 27, 2006 while employed by Tyson Fresh Meats, Inc. Her doctor advised that she could lift from 10 to 20 pounds for no more than 30 percent of her shift. She was not to perform pushing or pulling for more than 30 percent of her shift. Approximately two weeks after she presented the restrictions, Ms. Williams-Rojas was provided with light-duty work consistent with her restrictions.

Grimm did not have full-time, light-duty work available for Ms. Williams-Rojas during the shift she usually worked. The light-duty work had to be performed during the day shift so that there would be someone available to supervise her activities. She was told she could choose the 40 hours she wanted to work between the hours of 4:00 a.m. and 4:30 p.m. She was told she could even work a split shift if she so chose. Ms. Williams-Rojas attempted to work the day shift but missed time from work due to her own illness or that of her children. She also missed time due to appointments for herself or her children or because of child care issues.

The base period of Ms. Williams-Rojas's claim consists of the fourth calendar quarter of 2005 and the first, second and third quarters of 2006. During that time, she worked day shift hours at Tyson Fresh Meats, Inc.; night hours at the Thirsty Camel; and day hours at Tony's Fat Boy Pizza. She also worked temporary jobs for Temp Associates, primarily during evening shifts. She had both full-time and part-time employment during the base period of the claim. Ms. Williams-Rojas has prior work experience as a factory worker, waitress, and as a telemarketer. She is currently attending school in a nursing program.

With respect to her school attendance, Ms. Williams-Rojas had classes from 8:00 a.m. until approximately 12:30 p.m., Monday through Friday, during the fall, 2007, term. For the spring term of 2008, she was in classes beginning at 10:30 a.m., Monday through Friday. She was out of class at approximately 2:00 p.m. on Monday, Wednesday, and Friday and at approximately 1:00 p.m. on Tuesday and Thursday. During the fall of 2007, Ms. Williams-Rojas was seeing her doctor two to three times each week. Each visit would entail approximately four hours, including travel time.

Ms. Williams-Rojas became separated from her employment with Grimm on January 24, 2008 when she failed to report for work or contact the employer on that date. The issue of her separation from the employment has not been adjudicated by Workforce Development. The November 30, 2007 administrative law judge decision that adjudicated a separation issue was reversed by the Employment Appeal Board on the basis that there had been no separation from employment at that time.

#### **REASONING AND CONCLUSIONS OF LAW:**

The only issue before the administrative law judge is whether Ms. Williams-Rojas satisfied the availability requirements of the law. In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Ms. Williams-Rojas had the burden of establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). In order to be considered available for work, an individual must be available to the same extent as she accrued wage credits during the base period of her claim. Ms. Williams-Rojas has wage credits from working both day and night hours. She continued to be available to work night hours for Grimm after she was placed on restrictions.

The employer knew at the time of hire that Ms. Williams-Rojas was attending school during the day. For this reason, she specifically requested a second shift position at the time of hire. The employer's efforts to accommodate her by providing light-duty work during day hours is laudable. However, the fact remains that the employer was aware at the time of hire that Ms. Williams-Rojas had limited availability during day hours. Inasmuch as she remained available to work the night shift for which she was hired and has base period wage credits during night hours, the administrative law judge concludes that Ms. Williams-Rojas was available for work within the meaning of the law.

In addition to being available for work, Ms. Williams-Rojas also had to be able to work. The law does not require that she be able to perform her usual job. The law only requires that she be mentally and physically able to engage in some form of work that is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Therefore, the fact that she could not perform the work of a CNC router operator does not mean that she was not able to work. She has prior work experience as a telemarketer, a job which generally does not involve the lifting, pushing, and pulling that Ms. Williams-Rojas is restricted from performing. She demonstrated the ability to perform data entry work while on light duty with Grimm. She retains the capacity to perform a variety of clerical positions.

Ms. Williams-Rojas's medical restrictions do not preclude all work activity. The administrative law judge believes there is a labor market for her skills in data entry, telemarketing, and clerical work. It is concluded, therefore, that she retains the functional capacity to perform a variety of jobs that are engaged in by others as a means of livelihood. Therefore, she is able to work within the meaning of the law. Given her testimony regarding her current efforts to find employment, the administrative law judge concludes that Ms. Williams-Rojas is actively and earnestly seeking work.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Williams-Rojas was able to work and available for work within the meaning of the law effective October 14, 2007, the effective date of her additional claim for job insurance benefits. Having concluded that she was, in fact, able to and available for work, the administrative law judge need not determine if she was partially unemployed. Since she was able and available, there is no need to determine if she should be exempted from the able and available provisions of the law.

Ms. Williams-Rojas became separated from Grimm on January 24, 2008. The issue of her separation shall be remanded to the Claims Section to investigate and issue a determination.

**DECISION:**

The representative's decision dated November 8, 2007, reference 03, is hereby affirmed as to result. Ms. Williams-Rojas satisfied the availability requirements of the law effective October 14,

2007. Benefits are allowed, provided she satisfies all other conditions of eligibility. This matter is remanded to the Claims Section to adjudicate the January 24, 2008 separation from employment.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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