

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE LOPEZ

Claimant

APPEAL NO. 07A-UI-02000-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP

Employer

**OC: 02/24/07 R: 03
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Jose Lopez (claimant) appealed an unemployment insurance decision dated February 23, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits for the one-week period ending December 30, 2006 because he did not accept an offer of work with Wellman Dynamics Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 14, 2007. This hearing was consolidated with Appeal Number 07A-UI-01999-BT. Cristobal Lopez participated in the hearing on behalf of his brother, Jose Lopez. The employer participated through Dorothy Hayes, Human Resources Supervisor; Nicole Bierle, Human Resources Manager; and employer representative Dorothy Hayes. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was able and available for work for the one-week period ending December 30, 2006?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant and his brother, Cristobal Lopez, were hired as full-time core room employees on November 29, 2004 and continue to work in that same capacity. Their department was going to be closed from December 27, 2006 through December 29, 2006. The claimants had the option of working in a different department, taking vacation days, or receiving no pay. The claimants refused to work or take vacation but filed for unemployment insurance benefits for the one-week period.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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 claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The employer had work available for the one-week period ending December 30, 2006, but the claimant chose not to work because the work was in a different department. Consequently, the claimant was not available for work and is not entitled to benefits.

DECISION:

The unemployment insurance decision dated February 23, 2007, reference 02, is affirmed. The claimant does not meet the availability requirements of the law and is denied benefits for the one-week period ending December 30, 2006.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw