

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH GRAHAM
Claimant

APPEAL NO: 16A-UI-09560-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP
Employer

OC: 11/22/15
Claimant: Appellant (1)

Iowa Code Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 22, 2016, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 20, 2016. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired by Wellman Dynamics July 26, 2013. She was discharged June 14, 2016, for accumulating four written warnings. The claimant filed a grievance through her union representative and on July 18, 2016, she was reinstated in her job. The claimant thought she would receive back pay as part of the agreement to allow her to return to work but when that was not part of the settlement she reopened her claim for unemployment insurance benefits with an effective date of July 31, 2016.

The claimant is working full-time for Wellman Dynamics and there has been no change in her hours or wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work.

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".

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant's temporary separation from her employment with Wellman Dynamics is not an issue in the case before the administrative law judge. The issues are whether the claimant is able and available for work and whether she is still employed at the same hours and wages since July 31, 2016. The claimant is not able and available for work as she has returned to her full-time position and is working too many hours to be considered able and available for other work. Additionally, there has been no change in her hours and wages since she returned to work at Wellman Dynamics July 18, 2016. Accordingly, benefits must be denied.

DECISION:

The August 22, 2016, reference 05, decision is affirmed. The claimant is not able and available for work because she is working full-time hours and is not available to work elsewhere and there has been no change in her hours or wages since being rehired effective July 18, 2016. Consequently, benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs