

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOANN DIETCH
1508 - 57TH ST
DES MOINES IA 50311-2224

OLSTEN STAFFING SERVICES CORP
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06O-UI-06357-BT
OC: 03/26/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Joann Dietch (claimant) appealed an unemployment insurance decision dated April 11, 2006, reference 01, which held that she was not eligible for unemployment insurance benefits because she was still employed with Olsten Staffing Services Corporation (employer) and not available to work. This matter was originally scheduled for hearing on May 4, 2006 but the claimant failed to participate as she was not available at the number provided because it went directly to voice mail. Administrative Law Judge Scheetz issued a denial of benefits in appeal 06A-UI-04205-S2. The claimant appealed the decision and the Employment Appeal Board remanded for a new hearing in an order dated June 16, 2006. The Employment Appeal Board found the claimant had provided a telephone number, but Judge Scheetz was unable to reach

the claimant because the call went straight to voice mail. The Employment Appeal Board found the claimant "immediately contacted the agency, only to learn that her call was too late." The claimant's appeal letter reports that she noticed she had a voice mail message but waited 15 minutes before checking her voice mail. The Employment Appeal Board's Reasoning and Conclusions of Law "find that the claimant established her intention to follow through with the process and has provided good cause for her nonparticipation."

After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2006. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time temporary office worker from November 2003 through the present. Although she is not currently working for the employer herein, she is still active with the employer. The claimant is currently working at a full-time job with Manpower although reports that she has not been getting full-time hours lately.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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 24.23(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 was hired temporarily as a full-time clerical worker and continues to be employed in that same capacity, albeit with another agency. She is disqualified from receiving benefits from this employer.

DECISION:

The unemployment insurance decision dated April 11, 2006, reference 01, is affirmed. The claimant is not eligible for benefits as she does not meet the availability requirements of the law.

sda/cs