

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY LUX
Claimant

APPEAL NO. 11A-UI-05681-WT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

PELLA CORPORATION
Employer

**OC: 3/13/11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

On April 28, 2011, claimant filed an appeal from a decision of a representative dated April 18, 2011, reference 02, which held claimant not able and available for work. The determination further held that claimant was “still employed” in his job. After due notice, a telephone conference hearing was scheduled for and held on May 25, 2011. Claimant participated personally. Employer participated by Jennifer Grandgenett, H.R. Representative. Employer Exhibit One was admitted in to the record.

ISSUES:

The issue is whether claimant is able and available for work and specifically whether claimant “can be considered partially unemployed.”

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds the following. Greg Lux has worked for Pella Corporation as a full-time laborer since 1988. His normal hours of work were 40 hours per week. His hours were reduced during the week from March 13, to March 19, 2011. He only worked 21 hours during that week.

REASONING AND CONCLUSIONS OF LAW:

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".

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.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The issue clearly is not whether claimant was *able* to work, it is whether he was *available* to work as of March 19, 2011. According to the undisputed facts, including Employer Exhibit One and the sworn testimony of Jennifer Grandgenett, he was able and available for work.

DECISION:

The fact-finding decision dated April 18, 2011, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits effective March 19, 2011, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs