

**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**

**ADAM KULISH  
2585 MARTHA LN  
MT PLEASANT IA 52641**

**PHILIPS PALLETS INC  
PO BOX 616  
MT PLEASANT IA 52641-0616**

**Appeal Number: 05A-UI-11927-BT  
OC: 03/06/05 R: 04  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Adam Kulish (claimant) appealed an unemployment insurance decision dated November 22, 2005, reference 02, which held that he was not eligible for unemployment insurance benefits because he does not meet the availability requirements of the law. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 12, 2005. The claimant was not available when the number provided was called for the hearing, and therefore, did not participate. 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 reviewed and considered all of the evidence in the record, finds that: The claimant re-opened his claim for unemployment insurance benefits effective October 30, 2005. The employer protested the claimant's benefits on November 7, 2005 by stating that he was still employed full-time. A decision was issued November 17, 2005 allowing benefits and that decision has not been appealed. A subsequent decision was issued on November 22, 2005 denying benefits based on the employer's protest form, since the employer reported the claimant was still working full-time. The claimant appealed this decision.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant meets the availability requirements of the law and for the following reasons, the Administrative Law Judge finds that he does.

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 decision herein was issued based upon the employer's protest that he was still employed. However, the claimant separated from his employment on the date of the protest form. A decision was issued November 17, 2005, which determined the claimant's separation was not disqualifying and this decision was subsequently issued in error. The claimant meets the availability requirements of the law and qualifies for benefits, provided he is otherwise eligible.

#### DECISION:

The unemployment insurance decision dated November 22, 2005, reference 02, is reversed. The claimant meets the availability requirements of the law and benefits are allowed, provided he is otherwise eligible.

sdb/pjs