

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA A AKERS ET AL**  
Claimant

**APPEAL NO. 07A-UI-02397-H**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLMAN DYNAMICS**  
Employer

**OC: 12/24/06 R: 03**  
**Claimant: Respondent (1-R)**

Section 96.5(3)a – Refusal of Work

**STATEMENT OF THE CASE:**

The employer, Wellman Dynamics Corporation (Wellman), filed an appeal from a decision dated February 23, 2007, reference 01. The decision allowed benefits to the claimants. After due notice was issued a hearing was held in Creston, Iowa, on June 20, 2007. Lisa Aikers, Eric Alford, Janet Anderson, Fredrick Baumfalk, John Bentley, John Bielski, Raydean Boles, Phillip Bradley, Keith Clark, Roy Crenshaw, Ryan Crenshaw, Edith Davis, James Flowers, Ronald Gordon, Michael Killion, Scott Lemon, Jose Lopez, Michael Luddington, David McGuire, Winfield McKinney, AJ Miller, Michael Myers, Edward Nelson, Jose Parada, Clay Petit, Sunita Phipps, Brian Sobotka, Sherry Steinhoff, Richard Tucker, Betty Van Horn, Thomas VanPelt, Clint Vicker, Dwight Welcher, Dennis Williams, Jeannie Woosley and Gerald Young participated in person. Bradley Scarberry submitted a written statement admitted as Exhibit A in lieu of personal testimony. Claimant Edward Phillips had contacted the administrative law judge prior to the hearing and stated he would submit a written statement in lieu of personal participation but no statement was received by the time the hearing was held. The employer participated by Foundry Manager Joe Williamson and was represented by Attorney Gayla Harrison. Exhibits A, B, One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant is disqualified due to a refusal of work.

**FINDINGS OF FACT:**

The claimant filed a claim for unemployment benefits with an effective date of December 24, 2006. The employer posted memos on November 27, December 4 and 19, 2006, announcing the foundry would be closed between Christmas and New Years. The first two memos stated there would be six positions available in "blow out" and "rotary file," but the last one only stated no representative from Iowa Workforce Development would be coming to the plant and employees had the option of working, using vacation or taking no pay during the shut down and any employee who had completed the probation period and was interested in working should contact a supervisor.

On December 12, 21 and 22, 2006, supervisors conducted a "survey" of employees, asking whether they planned to work, take vacation or no pay. All the claimants in this case elected to take no pay then filed for unemployment benefits during the shutdown.

The employer felt the claimants were not able and available during the one-week period of the shut down and requested the issue of their availability to be remanded to the Claims Section for adjudication.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The record is clear that no direct job offer was made to the claimant, only a general memo regarding the availability of six positions during the shutdown for those who had finished the probationary period. The "survey" taken by the supervisors was not a job offer, only general information gathering regarding the employees' intent. The record clearly indicates that no offer was work and refusal occurred during the claimant's benefit year as required by the above Code and Administrative Code sections, and Dico, Inc., v. Iowa Employment Appeal Board, 576 N.W.2d 352 (Iowa 1998).

**DECISION:**

The representative's decision of February 23, 2007, reference 01, is affirmed. The claimant is not disqualified as there was no refusal of a job offer during the claim year.

The issue of whether or not the claimants were able and available during the week in question is remanded to the Claims Section for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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