

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARRY L GOODE
Claimant

APPEAL NO. 12A-EUCU-00214-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
PALMER CONSULTING
Employer

OC: 08-07-11
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 13, 2012, reference 09, decision that allowed benefits. After due notice was issued, a hearing was held on September 28, 2012. The claimant did not participate. The employer did participate through Matt Joens, Account Executive.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer questioned whether the claimant was still available for work as they had learned that he was working full time for Wells Fargo. There was no evidence to dispute the employer's claim that the claimant is now working full time for another employer, thus he should be considered unavailable for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective September 1, 2012.

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.

Because the claimant is now working full time for another employer he is working enough hours that he can no longer be considered able to and available for work. Accordingly, benefits are denied effective September 1, 2012.

DECISION:

The August 13, 2012 (reference 09) decision is modified in favor of the appellant. The claimant is not able to work and available for work effective September 1, 2012. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs