

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOREN P LONG

Claimant

APPEAL NO. 07A-UI-02298-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP

Employer

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

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 23, 2007, reference 01, decision that denied benefits for the period from December 24, 2006 through December 30, 2006. After due notice was issued, a telephone conference hearing was held on March 22, 2007. Claimant participated with his spouse, Mary Long. Employer participated through Nicole Bierle and was represented by Dorothy Hayes of NSN Employer Services, Inc.

ISSUE:

The issue is whether claimant was available for work during the week ending December 30, 2006.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is currently employed and was advised by posting and by supervisor communication that employees could work in another department at the same rate of pay and shift on December 27, 28, and 29, 2006, take vacation, or take the days without pay. Employer advised employees it would allow anyone to work in that department without experience as long as they had completed their 90-day probationary period, which claimant had done. Claimant opted to take the days without pay but then filed a claim for unemployment insurance benefits.

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.

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 24.22(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(3), (16) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Since claimant opted to take the days without pay when he could have worked, even without experience in that department, he is not entitled to unemployment insurance benefits. Accordingly, benefits are denied.

DECISION:

The February 23, 2007, reference 01, decision is affirmed. The claimant is not able to work and available for work for the one week ending December 30, 2006. Benefits are denied for that period.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw