

**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**

**DALE ELGERT  
514 – 2<sup>ND</sup> ST  
PO BOX 46  
MERRILL IA 51038**

**ALL IN A DAY  
509 DOUGLAS ST  
PO BOX 5047  
SIOUX CITY IA 51102-5047**

**Appeal Number: 06A-UI-04334-S2T  
OC: 08/14/05 R: 01  
Claimant: Respondent (1)**

**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

STATEMENT OF THE CASE:

All In A Day (employer) appealed a representative's April 10, 2006 decision (reference 03) that concluded Dale Elgert (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2006. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Cyd Fleckenstein-Hall, Office Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 17, 2005, as a full-time temporary

helper. During the week ending February 25, 2006, the claimant was laid off for lack of work. The employer had no work available to him. The claimant was available for work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified for being unavailable for work. For the following reasons, the administrative law judge concludes he is not.

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.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer laid the claimant off for lack of work through February 25, 2006. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. He was available to work but no work was available. The claimant is eligible to receive unemployment insurance benefits for that period.

#### DECISION:

The representative's April 10, 2006 decision (reference 03) is affirmed. The claimant is not disqualified from receiving unemployment insurance benefits. He was available for work during the week ending February 25, 2006.

bas/kkf