

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A WILKEN

Claimant

APPEAL NO. 08A-UI-04889-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FENCO PRODUCTS INC

Employer

**OC: 04-06-08 R: 04
Claimant: Appellant (2)**

Section 96.4-3 - Able and Available
Section 96.5(1) – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 15, 2008, reference 03, decision that denied him benefits finding he was not able to and available for work. After due notice was issued, a hearing was held on June 5, 2008. The claimant did participate. The employer did participate through Donald Fenske, Owner.

ISSUE:

Is the claimant able to and available for work and if so, was he laid off due to lack of work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part grinder part time beginning in July 2007 through January 11, 2008 when he was laid off due to lack of work.

After being laid off due to lack of work, the claimant received a work restriction that allows him to work only eighteen hours per week due to a back injury. The claimant has never been called back to work by Fenco Products. The claimant's wages in his base period were earned by working part time employment. The claimant was not hired to work full time hours by Fenco, only part time hours. The employer did not know of the claimant's work restriction until after he had been laid off from work due to lack of work. When the claimant told Mr. Fenske of his work restriction, Mr. Fenske told him he would take it into consideration.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant was hired to work part time and was laid off well before he received any work restriction. He has not been called back to work by the employer since being laid off. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

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".

The claimant's wage base is comprised only of part time work. He is currently able to work part time, that is eighteen hours per week. The claimant is able to and available for work to the same extent as he was when earning the wages in his base period. The claimant is able to and available for work.

DECISION:

The May 15, 2008, reference 03, decision is reversed. The claimant was laid off due to a lack of work. The claimant is able to and available for work effective January 11, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css