

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD WOLFE
Claimant

APPEAL NO: 10A-UI-01392-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHARD JACOBSON ET AL
Employer

OC: 01-04-09
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(20) – Availability Unduly Limited

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 19, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 30, 2010. The claimant participated in the hearing with his ex-wife Lissa Birkenhotz. Frank Tursi, Operations Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and whether he unduly limited his availability.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for Jacobson Industrial Services last assigned to Jeld-Wen Windows from July 27, 2009 to December 22, 2009. He worked full-time as a warehouse employee on the first shift earning \$9.48 per hour. He was laid off December 22, 2009, due to a lack of work. On January 5, 2010, the employer offered him a position at Jeld-Wen Doors with the same terms and conditions except he would have been paid \$10.39 per hour instead of \$9.48. The claimant declined that offer because he was waiting to hear from Jeld-Wen Windows about a possible recall as he was on the list to be recalled but was not told when, or even if, he would be recalled 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.

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".

Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers the claimant is considered unavailable for work. In this case the employer offered the claimant a position at Jeld-Wen Doors with the same terms and conditions as his position at Jeld-Wen Windows except the job offered paid \$.90 more per hour. The claimant declined that offer because he was waiting to be recalled to Jeld-Wen Windows, a position he was on the waiting list for but did not have a guarantee he would be recalled and rather than accept the position at Jeld-Wen Doors he declined that position to wait for a position with Jeld-Wen Windows. Accordingly, benefits are denied as the claimant is not considered able and available for work while waiting to go to work for a specific employer. Therefore, benefits must be denied.

DECISION:

The January 19, 2010, reference 03, decision is affirmed. The claimant is not able to work and available for work effective January 5, 2010. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs