

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY A WALLACE

Claimant

APPEAL NO. 11A-UI-11770-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUILDER'S SAND & CEMENT CO INC

Employer

OC: 07/10/11

Claimant: Appellant (4)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Amy Wallace, filed an appeal from a decision dated September 2, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 29, 2011. The claimant participated on her own behalf. The employer, Builder's Sand and Cement Company, Inc. (Builder's), participated by Human Resources Manager David Starkweather.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Amy Wallace began working for Builder's November 21, 2011, as a part-time cleaner. She was hired to work four hours per week and continues in that capacity as of the current time. The current claim was not filed because of any change in her status but because her prior claim had expired. That prior claim was based on separation from her regular full-time employer. Her base period wages include those earned in full-time work.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was hired to be a part-time employee and remains in that capacity as of the current date. She is able and available to this current employer and to other employers. But, as she is still working in the same capacity as during her base period, the employer's account will not be charged.

DECISION:

The representative's decision of September 2, 2011, reference 02, is modified in favor of the appellant. Amy Wallace is eligible for benefits, provided she is otherwise qualified. The account of Builder's Sand and Cement will not be charged with benefits paid to the claimant.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw