

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

CASSIE J WILHELM  
10189 STATE 44  
CALEDONIA MN 55921

NATURE CARE COMPANY  
QUALITY CARE  
PO BOX 5613  
CORALVILLE IA 52241

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Appeal Number: 04A-UI-00507-CT  
OC: 11/02/03 R: 03  
Claimant: Respondent (1-R)

**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:

Nature Care Company filed an appeal from a representative's decision dated January 7, 2004, reference 02, which held that no work had been offered to Cassie Wilhelm on December 14, 2003. After due notice was issued, a hearing was held by telephone on February 5, 2004. Ms. Wilhelm participated personally and was represented by Joseph Hammell, Attorney at Law. The employer participated by Sue Moore, Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Wilhelm began working for Nature Care Company on June 6, 2002 as a full-time employee. The employer's lawn care and landscape business is seasonal and workers were laid off on October 31, 2003. At the time of the layoff, employees were advised that they needed to remain available for snow removal work during the layoff. If they were not going to be available, they had to complete a request for time off to cover the period so they would not be called for snow removal.

On December 14, the employer left messages for Ms. Wilhelm that snow removal work was available. She was not at home as she had gone to her parents' home in Minnesota on the morning of December 13. She did not request time off because she only intended to be gone for one day and did not believe it was going to snow. She returned home on the afternoon of December 14 and received the employer's message at that time. She did not call the employer to explain why she had not responded to the message. Ms. Wilhelm had responded and performed snow removal on other occasions during her layoff. There would have been from four to eight hours of work on December 14.

When Ms. Wilhelm next spoke to the employer on January 6, she was told that she was presumed to have voluntarily quit when she failed to work on December 14. She will not be recalled for work in the spring and will not be provided further snow removal work this winter. The issue of her total separation from the employment has not been adjudicated by Workforce Development.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed regarding Ms. Wilhelm's failure to work on December 14, 2003. The provisions of Iowa Code Section 96.5(3)a disqualifies an individual from receiving benefits if she has refused an offer of suitable work without good cause. The administrative law judge believes this section was intended to apply to offers of new employment, not situations where one is offered temporary work during a layoff by the employer from whom the individual is laid off. The law that is more applicable is 871 IAC 24.23(41).

871 IAC 24.23(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38)"c" and 96.29.

It is true that Ms. Wilhelm could have worked from four to eight hours on December 14 but was not available. However, an availability disqualification is appropriate only where the individual

fails to work the major portion of the workweek for her regular employer. See 871 IAC 24.23(29). The administrative law judge concludes that Ms. Wilhelm's failure to be available for one day is not sufficient to result in disqualification from benefits.

Ms. Wilhelm has now been separated from the employment. The issue of the separation has not previously been adjudicated. Therefore, the matter shall be remanded for a determination concerning the total separation from employment.

**DECISION:**

The representative's decision dated January 7, 2004, reference 02, is hereby affirmed as to result. No disqualification is imposed for Ms. Wilhelm's failure to work for Nature Care Company on December 14, 2003. This matter is remanded to Claims for a determination regarding Ms. Wilhelm's total separation from the employment.

cfc/b