

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Lucas State Office Building  
Des Moines, Iowa 50319

**Appeal Number: 07-IWDUI-159**  
**OC: 04/29/07**  
**Claimant: Appellant (3)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**FRANKIE W SLATTON**  
**815 ½ BROADWAY**  
**PELLA IA 50219-1521**

**PELLA PRECAST PRODUCTS**  
**912 W 11<sup>TH</sup> STREET**  
**PELLA IA 50219-7858**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, IWD

**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 the Department . 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)

**December 7, 2007**

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(Decision Dated & Mailed)

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Section 96.4-3 – Able and Available  
Section 96.5-5b – Worker’s Compensation/Temporary Disability

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 6, 2007, reference 01, which held that the claimant was receiving worker’s compensation temporary disability that is fully deductible from unemployment insurance effective the week ending June 23, 2007, which reduces his weekly benefit amount.

After due notice was issued, a hearing was held by telephone conference call on December 3, 2007. The claimant did not participate. Krista Harthoorn, Corporation Secretary, participated for Pella Precast Products. Iowa Workforce Development, Investigation and Recovery, participated by

Investigator, Cindy Stroud.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having examined all of the evidence in the record, the finds: The claimant filed a claim for unemployment benefits with an effective date of April 29, 2007. The claimant's weekly benefit amount is \$290.00.

The department conducted a cross match audit of the claimant's claim when it noted that an employer (Pella PreCast Products) was reporting wages at the same time he was claiming for unemployment benefits. Employer representative Harthoorn reported to the department that due to a job related injury the claimant was off work and receiving temporary total worker's compensation disability benefits (TTD) beginning June 20, 2007. The claimant was paid a weekly benefit of \$275 by the employer's insurance provider, Midwest Family from June 20, and continues to receive this benefit through the date of this hearing.

The claimant has remained under his doctor's care and off work from June 20, 2007 through the date of this hearing. The claimant has not received a doctor's release to return to work, as he is unable to perform his job duties.

The claimant failed to respond to the hearing notice.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received temporary worker's compensation disability that reduces his unemployment compensation effective the week ending June 23, 2007. The companion issue is whether the claimant is able and available for work.

#### **Iowa Code Section 96.5-5 provides:**

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

b. Compensation for temporary disability under the worker's compensation law of any state or under a similar law of the United States.

#### **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".

**871 IAC 24.22(96) Benefits eligibility conditions.** For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

The administrative law judge concludes that the claimant is disqualified from receiving benefits effective the week ending June 23, 2007 pursuant to Iowa Code section 96.4-3. The hearing notice put the claimant on notice that able and available was an issue to be considered in this appeal. The availability disqualification was elected by the department in this hearing, because it denies any benefit to the claimant on a week-to-week basis due to his inability to work, whereas, the worker's compensation would only reduce the benefit entitlement.

Since the claimant filed an appeal, the department is allowed to consider the work availability issue that has a greater impact on the claimant's unemployment claim. While the TTD does reduce the benefit entitlement, the claimant's unavailability renders him ineligible for any weekly benefit.

DECISION:

The decision of the representative dated November 6, 2007, reference 01, is MODIFIED ADVERSELY to the claimant. The claimant is ineligible and disqualified from receiving benefits effective the week ending June 23, 2007, as he is not able and available for work.

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