

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY H MCDONALD
Claimant

APPEAL NO. 07A-UI-06335-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE**
Employer

**OC: 05-06-07 R: 01
Claimant: Respondent (4)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 18, 2007, reference 02, decision that found the claimant able to and available for work and allowed unemployment insurance benefits. After due notice was issued, a hearing was held on July 30, 2007. The claimant did participate. The employer did participate through Mallory Russell.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was suspended from work for a disciplinary matter from May 9, 2007 through May 22, 2007. He has returned to work full time and continues to work full time for his employer.

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".

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was suspended for two weeks and has since returned to work full time. The claimant was able to and available for work during his suspension period but is no longer considered able to and available, since he is currently working full time. The claimant was able to and available for work during his suspension, but effective May 22, 2007 the claimant is no longer considered able to and available for work, since he is working full time for an employer. Accordingly, benefits are denied effective May 22, 2007.

DECISION:

The June 18, 2007, reference 02, decision is modified in favor of the appellant. The claimant is not able to work and available for work effective May 22, 2007. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw