

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HARAGAKIZA SHABANI
Claimant

APPEAL NO. 14A-UI-06323-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/11/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated June 13, 2014, reference 02 that amends 01, which held he was unable to work due to illness as of May 11, 2014 and benefits are denied. A telephone hearing was held on August 7, 2014. The claimant, and Interpreter Mulonda Mwangilma, participated. The employer did not participate.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant began work for the employer on June 30, 2008 and was working as a full-time meat cutter as of May 11, 2014. When claimant complained about back pain, the employer sent him home for rest and referred him to a doctor.

The doctor restricted claimant to light-duty work and claimant offered to do it. The employer responded it would call claimant back to work, but it has not done so as of the date of this hearing.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes claimant was not able and available to perform his regular job as a full-time meat cutter due to back pain, and benefits are denied as of May 11, 2014.

The employer sent claimant home due to back pain and a doctor examined claimant about this condition. Claimant admits he was restricted to light duty that would not allow him work his regular job as a meat cutter. The employer is not required to provide claimant with light-duty work. There is no medical evidence claimant has been released to return to work without restriction.

It appears the non-speaking understanding English claimant is waiting for the employer to call him back to work when he needs to provide an unrestricted medical release. Until claimant returns to the employer and offers to perform work without restriction, the employer is not going to consider re-employment.

DECISION:

The decision of the representative dated June 13, 2014, reference 02 that amends 01, is affirmed. The claimant is not able and available to perform his regular job as of May 11, 2014, so he does not meet the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css