

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL RIVAS
Claimant

APPEAL NO. 13A-UI-10464-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/28/13
Claimant: Respondent (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Tyson Fresh Meats (employer) appealed a representative's September 4, 2013, decision (reference 01) that concluded Samuel Rivas (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 10, 2013. The claimant participated personally. The employer participated by Kristi Fox, Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2013, as a full-time production worker. The claimant suffered a work-related injury on May 14, 2011. The claimant suffered from the effects of that injury in July 2013. On July 29, 2013, the claimant was placed on a medical leave of absence and paid workers' compensation benefits. The claimant expects to receive benefits through October 31, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not able and available for work.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

When an employee requests and is granted a leave of absence, he is considered to be voluntarily unemployed. The claimant is on a medical leave of absence. He is considered to be voluntarily unemployed during the period of the medical leave of absence. The claimant is not eligible to receive unemployment insurance benefits from July 29, 2013, because he was not able and available for work.

DECISION:

The representative's September 4, 2013, decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not able and available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs