

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ZING K NUAM**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 15R-UI-12972-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/15**  
**Claimant: Appellant (1)**

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Iowa Administrative Code r. 871-24.23(10) – Able and Available, Leave of Absence  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Zing Nuam (claimant) filed an appeal from the September 17, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she requested a leave of absence from Tyson Fresh Meats, Inc. (employer) rendering her voluntarily unemployed and not available for work. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2015. The claimant participated through Paralegal Hattie Holmes and with the assistance of Interpreter Stanley (employee number 6328) from CTS Language Link. The employer participated through Human Resources Clerk Shannon Wehr.

**ISSUES:**

Is the claimant on an approved leave of absence or able to and available for work?

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Worker beginning on April 1, 2013, and she began a leave of absence on August 3, 2015 which is scheduled to run through August 3, 2016. In 2014, the claimant began experiencing pain in her back and shoulders. She filed for Workers' Compensation benefits which were denied and at no time did any of her doctors state that her injury was work-related.

The claimant began seeing a new doctor in the summer of 2015 who gave her injections for the ongoing pain in her back. The doctor told her in August 2015 that due to the continued pain, the claimant should take a year to rest. The claimant began her leave at that time. She remains an active employee in the employer's system. The claimant is unable to perform any work due to the pain she experiences.

### **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. Benefits are denied.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2)j(1)(2) provides:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(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.

The claimant requested and was given a leave of absence to rest for the period from August 3, 2015 to August 3, 2016. The claimant clearly testified multiple times during the hearing that she is unable to perform any work at this time due to her pain. Accordingly, benefits are denied.

The claimant has not yet separated from the employer rendering the issues related to her separation moot at this time.

**DECISION:**

The September 17, 2015, (reference 01) decision is affirmed. The claimant is not able to work and available for work effective August 3, 2015. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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