

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMIZA MESINOVIC**  
Claimant

**APPEAL NO. 09A-UI-09287-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**Original Claim: 05/10/09  
Claimant: Appellant (4)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Ramiza Mesinovic (claimant) appealed an unemployment insurance decision dated June 24, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not able to work due to an injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2009. The claimant participated in the hearing with Attorney Adnan Mahmutagic. The employer participated through Human Resource Managers Rick Wood and Jennifer Stubbs. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time laborer on November 28, 2000 and continues to be employed with this employer. She sustained a work-related injury on approximately August 20, 2008 and has worked intermittently since that date. The employer physician released her without restriction on March 19, 2009, but Medical Provider Karen Franczyk took her off work from March 23, 2009 through April 28, 2009. A Dr. Manshadi released the claimant to return to work with restrictions beginning April 28, 2009 through May 21, 2009, at which time Dr. Arnold Delbridge took her off work completely. The claimant has not been released to return to work.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She is recovering from surgery at this time and is not able to work. However, the claimant was released to return to work with restrictions from April 28, 2009 through May 21, 2009. The claimant therefore meets the availability requirements of the law from May 10, 2009 through May 20, 2009 and qualifies for unemployment insurance benefits during that time period, provided she is otherwise eligible.

#### **DECISION:**

The unemployment insurance decision dated June 24, 2009, reference 01, is modified in favor of the appellant. The claimant was able to work from May 10, 2009, when she filed her unemployment insurance claim, through May 21, 2009, when she was taken off work by her treating physician. She is not available for work after that date and does not qualify for benefits after that date.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw