

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BONITA L GALVEZ
105 N CENTER ST APT 17
MARSHALLTOWN IA 50158**

**IOWA QUALITY BEEF LLC
3337 L AVE
TAMA IA 52339**

**Appeal Number: 04O-UI-10001-H2T
OC: 01-11-04 R: 02
Claimant: Appellant (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 11, 2004, reference 09, decision that denied benefits. After due notice was issued, a hearing was held on July 9, 2004 before Administrative Law Judge Bonny Hendricksmeier. The claimant did participate. The employer did participate through Bob Stringer, Human Resources Director, and Laura Hippen, Nurse. After a decision was issued by Judge Hendricksmeier on July 13, 2004, the claimant appealed to the Employment Appeal Board. The Employment Appeal Board remanded the case, without vacating Judge Hendricksmeier's decision, for admission of documents submitted by the claimant. After due notice was issued, an additional hearing was held on October 7, 2004. The claimant did participate. The employer did participate through Henry Rouse, Controller. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant had carpal tunnel surgery, which she alleges is a work-related injury, in the first quarter of 2004. At the hearing on July 9, 2004 the claimant testified that she had not been released to return to work by her physician and that she still suffered pain in her hands, neck and back. The claimant also testified that she was not able to stand or walk for long periods of time.

At the hearing held on October 7, 2004 the claimant was specifically asked about the doctor's note found in Claimant's Exhibit A that states in part: "She can return to work on 5/12/04." The claimant indicated that she did not believe the doctor was returning her to work because she was able to work but only so that the employer could fire her. After receiving the doctor's note that says she could return to work on May 12, 2004, the claimant clearly testified that she never went to the employer and offered her services because she did not believe she was capable of working due to her physical condition. It is clear, notwithstanding the doctor's note releasing the claimant to work on May 12, 2004, that the claimant believed she was not capable of working and she acted in accordance with her own beliefs and did not go to the employer and offer to work. The claimant's testimony has been consistent at both hearings; she believed she was not able to work due to physical limitations as a result of her carpal tunnel surgery, no matter what opinion her treating physician offered. Because she did not believe herself capable of working, the claimant did not work.

The claimant has since returned to work on a part-time basis for another employer, beginning on August 11, 2004.

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 from May 23, 2004 until August 11, 2004.

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".

The claimant's own uncontroverted testimony on two separate occasions has been that she was not physically able to work on May 12, 2004 due to her carpal tunnel problems. Because she did not believe she was physically capable of working she never went to the employer and offered to return to work even after receiving a doctor's note releasing her to return to work on May 12, 2004. Even though it appears the claimant's treating physician had released her to work, the claimant did not agree with his opinion and did not seek work due to her own belief

that she physically could not work. The claimant's opinion that she could not physically work is more credible than her doctor's note releasing her to return to work on May 12, 2004, and it is found that the claimant was not able to work and available for work effective May 23, 2004. Since it is now clear that the claimant has returned to work, on a part-time basis beginning on August 11, 2004, she has established her ability to work effective August 11, 2004. The claimant was not able to and available for work from May 23, 2004 until August 11, 2004. Benefits are allowed effective August 11, 2004, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 11, 2004, reference 09, is modified in favor of the appellant. The claimant is not able to and available for work from May 23, 2004 through August 10, 2004. The claimant is able to work and available for work effective August 11, 2004. Benefits are allowed, provided the claimant is otherwise eligible.

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