

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSANA PATINO FLORES

Claimant

APPEAL NO: 13A-UI-07738-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARZETTI FROZEN PASTA INC

Employer

OC: 06/03/12

Claimant: Respondent (4/R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 19, 2013 determination (reference 04) that held the claimant eligible to receive benefits as of November 4, 2012, because she was on a short-term layoff and was able to and available for work. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Ike Rocha interpreted the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant was not able to and available for work from November 4, 2012, to March 30, 2013, but is able to and available for work as of March 31, 2013.

ISSUE:

Was the claimant able to and available for work as of November 4, 2012?

FINDINGS OF FACT:

After the claimant was injured at work a second time in May 2012, she was released to work with permanent restrictions in late August 2012. The August restrictions indicated she had a 30 to 45-pound weight restriction. With these restrictions the employer had work for her to do. In early September 2012 the claimant signed papers that indicated she was unable to do the work the employer had that accommodated her work restrictions.

The claimant worked a few hours the first week of November under her August work restrictions. In November 2012, the claimant gave the employer a new work restriction that indicated she could only lift ten pounds. While the employer had work that could accommodate her August restrictions, the employer did not have work that could accommodate the November 2012 restrictions. The claimant started therapy for pain. The claimant started filing weekly claims the week of November 4, 2012.

On March 29, 2013, the claimant's doctor released her to work with the same restrictions she had received in August 2012. The claimant took her March 29, 2013 work restrictions to the employer on April 1, 2013.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). Based on the November work restrictions that she could only lift ten pounds, the evidence indicates she was not able or available for work as of November 4, 2012.

When the claimant was released to work under her August 2012 permanent work restrictions again on March 29, 2013, she then demonstrated that she was able to and available for work.

Based on her November 2012 work restrictions, the claimant is not eligible to receive benefits between November 4, 2012 and March 30, 2013. As of March 31, 2013, the claimant demonstrated she is able to and available to perform meaningful work and is eligible to receive benefits as of this date.

An issue of whether the claimant has been overpaid benefits she may have received between November 4, 2012, and March 30, 2013, will be remanded to the Claims Section to determine.

DECISION:

The representative's June 19, 2013 determination (reference 04) is modified in the employer's favor. From November 4, 2012, through March 30, 2013, the claimant was not available for work because her ten-pound weight restriction unduly limited her ability to perform meaningful work. As of March 31, 2013, the claimant is eligible to receive benefits because her permanent weight restrictions do not unduly limit her availability to work.

The issue of overpayment of benefits from November 4, 2012, through March 30, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css