

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

NELSON G LOGOS-NEDA
606 CEDAR ST
MUSCATINE IA 52761

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06015-DT
OC: 04/11/04 R: 04
Claimant: Respondent (5/R)

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 – Availability for Work

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's May 19, 2004 decision (reference 01) that concluded Nelson G. Logos-Neda (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2004. The claimant participated in the hearing. Christy Travis appeared on the employer's behalf. Susana Jaquez served as interpreter. 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.

ISSUES:

Has there been a separation from employment, and if so, is it disqualifying? Was the claimant eligible for unemployment insurance benefits by being available for work?

FINDINGS OF FACT:

The claimant started working for the employer on October 21, 2003. He worked full time as a production laborer in the employer's Columbus Junction, Iowa meat processing facility. He most recently worked there on or about March 1, 2004.

On January 19, 2004, the claimant was having some intestinal problems and had been seeking to use the restroom about once an hour. When questioned, he claimed that the condition was work-related due to stress. When the claimant asserted that his condition was work-related, the employer immediately instructed the claimant to report to its workers' compensation doctor in Iowa City. As instructed, the claimant drove himself to Iowa City, but on the way ran his car into a light pole. The doctor later indicated that his intestinal problem was not work-related.

The claimant began to report back pain that he attributed to the car accident. He was off work several days prior to March 1, 2004. On March 2, 2004, he brought in a doctor's excuse to the employer indicating that he could work with a restriction of sitting 15 minutes every hour and a 20-pound lifting restriction. The employer indicated it did not have work for the claimant within his restrictions and would not create work for him, as it considered any injury that might have resulted from the car accident to be non-work related. The claimant made various contacts with the employer since March 2, at times providing a doctor's excuse with restrictions and at times providing a doctor's statement that he could not work at least on that day. The claimant's doctor has not indicated when he could return to work without restriction.

As of the date of the hearing, the employer considers the claimant to be on an open-ended leave of absence. On March 2 the employer presented the claimant with a leave of absence form which the claimant refused to sign as he wished to return and do work within the restrictions.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether there has been a separation from employment, and if so, whether it was disqualifying. However, as of this time, it does not appear that there has been an actual separation from employment, so consideration of separation issues is not timely. If this situation results in a future separation, it may be necessary to determine whether, if it becomes a discharge, it was for properly reported absences for illness, or, if it becomes a voluntary quit for failing to return to work without restrictions, whether the condition causing the restrictions was in fact due to the January 19, 2004 car accident. The administrative law judge notes that as a matter of law, regardless of the fact that the original reason the employer sent the claimant to the doctor on January 19 was determined not to be work-related, the fact that the accident occurred on the way to the doctor as directed by the employer makes any injury that might have been incurred in the accident work-related; the only issue then to be determined is whether the complained-of condition and symptoms were in fact caused by the car accident. Then, even if the condition would be found to be caused by the car accident, the claimant would have to present competent medical evidence showing adequate justification for quitting; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. 871 IAC 24.26(6)b.

The only issue in this case which can be at least partially determined at this time is whether the claimant is currently eligible for unemployment insurance benefits by being available for work.

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".

Generally, when an employee is on a leave of absence, that employee is not eligible for unemployment insurance benefits because he or she is not available for work. However, in order for this to be true, the leave of absence must be negotiated with the consent of both parties. 871 IAC 24.22(2)j(1). The "leave of absence" in this case is unilateral on the part of the employer; the claimant did not agree with the leave of absence, and intended to continue working, but with restrictions. The claimant has made himself "available" for work.

Critical to full resolution of the claimant's eligibility as being able and available is an in-depth evaluation of the claimant's physical ability to work since he established his claim for benefits effective April 11, 2004. Some evidence was presented indicating that at least on some days, the claimant's doctor indicated that he was not "able" to work. Likewise, even with the work restrictions as indicated by the parties, it is unclear from a medical perspective as to whether there is in fact some available work, with the employer or some other work, that the claimant is physically "able" to perform within his restrictions. To be found able to work, "[a]n 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." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). However, the necessary medical information is not available in this case. The underlying representative's decision in this case did not explore the physical and medical issues. The matter is remanded to the Claims Section for investigation and determination of the physically able issue, to include obtaining a medical report from each of the claimant's doctors.

DECISION:

The representative's May 19, 2004 decision (reference 01) is modified with no effect on the parties. The claimant is available for work effective April 11, 2004, and is not voluntarily unemployed under a mutually agreed-upon leave of absence. As to the availability issue, exclusive of the physically "able" issue, the claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the physically "able" issue.

ld/kjf