

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

PEDRO C CARMONA CRUZ
406 WELLINGTON ST
WATERLOO IA 50701 5937

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-03411-DWT
OC: 02/12/06 R: 03
Claimant: Appellant (1)

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 to and Available for Work

STATEMENT OF THE CASE:

Pedro C. Carmona Cruz (claimant) appealed a representative's March 13, 2006 decision (reference 02) that concluded he was ineligible to receive unemployment insurance benefits as of February 12, 2006, because he was unable to perform his job at Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2006. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Jerome Rincken appeared on the employer's behalf. 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:

Is the claimant able to and available for work as of February 12, 2006?

FINDINGS OF FACT:

The claimant started working for the employer on July 24, 2001. The claimant received a work-related injury on March 17, 2003. The claimant had returned to work after the injury. On January 3, 2006, the claimant was at work when he reported pain in his arm. The employer asked the claimant to see his physician to determine what caused the pain and if he could work.

In early January 2006 the claimant went on an approved medical leave of absence. As of the date of the hearing, April 13, 2006, the claimant's doctor has not released him to return to work.

The claimant established a subsequent benefit year during the week of February 12, 2006.

REASONING AND CONCLUSIONS OF LAW:

Each week a claim files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The facts establish that as of February 12, 2006, the claimant's doctor has not released the claimant to work. Therefore, the claimant is not able to work. As of February 12, 2006, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 13, 2006 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits as of February 12, 2006, because he is not able to work. The claimant shall remain ineligible to receive benefits until he reopens his claim and establishes that he is able and available for work.

dlw/tjc