

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARYO LINSEY**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 20A-UI-00171-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/08/19  
Claimant: Appellant (2)**

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Iowa Code § 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Maryo Lindsey (claimant) appealed a representative's December 27, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits as of December 8, 2019, because he was unable to work Tyson Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2020. The claimant participated personally. The employer participated by Katherine Schoepski, Human Resources Administrative Associate.

**ISSUE:**

The issue is whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 14, 2017, to October 8, 2019, and from January 22, 2019, to the present as a full-time maintenance mechanic. He was on a leave of absence due to a back injury from October 8 to November 26, 2019.

The claimant attempted to report his absences but the employer's telephone system would not accept his employee number. On November 29, 2019, the day after Thanksgiving, the claimant traveled to the work site to speak to his supervisor and report his absences due to his medical issue. The claimant showed his supervisor that the telephone system would not accept his number by calling the system in the supervisor's presence. He also gave his supervisor a paper listing his next doctor's appointment on December 4, 2019. The claimant said he would be at work after his appointment. The supervisor said, "Okay".

The claimant had also been in contact with the employer's benefits coordinator to explain the situation. She contacted the third party who was handling his injury. The benefits coordinator was trying to make certain he could return to work on December 4, 2019, without being

separated from employment. She was having difficulty because of the Thanksgiving holidays and employees were absent.

The employer terminated the claimant on December 3, 2019. He was released to return to work on December 4, 2019, without restrictions. The claimant appealed the employer's actions and the claimant was reinstated and started working on January 22, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant was eligible to receive unemployment insurance benefits from December 8, 2019, to January 18, 2020.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work with restrictions by his physician. He is considered to be able and available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits from December 8, 2019, to January 18, 2020.

**DECISION:**

The representative's December 27, 2019, decision (reference 01) is reversed. The claimant is eligible to receive unemployment insurance benefits from December 8, 2019, to January 18, 2020.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs