

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE SCHMIDT
Claimant

APPEAL NO. 10A-UI-10501-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/13/10
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Joe Schmidt (claimant) appealed an unemployment insurance decision dated July 21, 2010, reference 02, which held that he was not eligible for unemployment insurance benefits because he is not able to perform work at this time for Tyson Fresh Meats, Inc. (employer) due to illness. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 10, 2010. The claimant participated in the hearing. The employer participated through Eloisa Baumgartener, Employment Manager. 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:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time production worker on March 13, 2006. He most recently went on a non-work-related medical leave of absence as of April 26, 2010. The claimant is currently on work restrictions of no more than ten hours per week and he is not allowed to be near machinery, which makes him unable to carry out the essential functions of his position. The leave of absence is scheduled to expire on April 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 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".

871 IAC 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). He is currently on a non-work-related medical leave of absence. The claimant does not meet the availability requirements of the law and benefits are denied as of June 13, 2010.

DECISION:

The unemployment insurance decision dated July 21, 2010, reference 02, is affirmed. The claimant is not entitled to unemployment insurance benefits, because he is not medically able to work.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw