

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA C NICHOLS
Claimant

APPEAL NO. 07A-UI-08766-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/05/07 R: 03
Claimant: Appellant (2)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Kayla C. Nichols (claimant) appealed a representative's September 12, 2007 decision (reference 01) that held her ineligible to receive benefits as of August 5, 2007, because she was not able to work for Tyson Fresh Meats, Inc. (employer) as a result of her pregnancy. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2007. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible able to and available for work as of August 5, 2007?

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 2006. The claimant works as a full-time utility worker. As a utility worker, the claimant works other employees' jobs when they are on vacation or on a break. Prior to August 6, 2007, the claimant was working as a picnic skinner. This is a hard job and the product sometimes hits employees in the abdomen. As a result of being hit in the abdomen, the claimant would leave work sore. The claimant found this job more difficult to do in her fifth or sixth month of pregnancy, as her abdomen became larger. The claimant asked if she could do another job so she would not get hit by product so much. The only restriction her physician gave the claimant was to limit the product hitting her abdomen. On August 6, the employer told the claimant she was being placed on a leave of absence and after she had her baby, she needed to contact the employer to let the employer know when she was able to return to work. Later, the claimant learned other pregnant employees had also been placed on a leave of absence.

The claimant's baby is due the week of October 1. Prior to October 1, the claimant has been able to and available to work for the employer. The claimant has filed claims for the weeks ending August 11 through September 22, 2007.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must establish that she is able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not available to work while on a leave of absence that has been negotiated with the consent of both parties. 871 IAC 24.22 (2) (j).

The facts do not establish that the claimant was unable to or unavailable for work as August 5, 2007. Instead, it appears the employer decided to place the claimant and other pregnant employees on leave of absence for business reasons. Based on the evidence presented during the hearing, the claimant was able to and available for work as of August 5, 2007.

DECISION:

The representative's September 12, 2007 decision (reference 01) is reversed. The claimant is able to and available for work as of August 5, 2007. The claimant did not initiate or consent to the leave of absence the employer placed her on in early August 2007. The claimant is eligible to receive benefits as of August 5, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw