

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMAS SMITH
Claimant

APPEAL NO. 12A-UI-10467-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08-05-12
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 27, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 1, 2012. The claimant did participate. The employer did participate through Teri Wray, Assistant Human Resources Manager.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning January 03, 2011 through September 6, 2012 when his employment ended. The claimant suffers from celiac syndrome which leaves him with vomiting and diarrhea. He is not physically able to work at any job currently because of the vomiting and diarrhea. He last worked in late August 2012. His illness is not work related.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective August 5, 2012.

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".

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 is not physically able to work because of the ill effects of his celiac syndrome. He cannot work due to vomiting and diarrhea. Since he is physically not able to work, benefits are denied.

DECISION:

The August 27, 2012 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective August 5, 2012. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs