

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN V FELIX
Claimant

APPEAL NO. 13A-UI-13325-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/26/12
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Work Search Requirement

STATEMENT OF THE CASE:

Adrian Felix filed a timely appeal from the November 25, 2013, reference 03, decision that denied benefits effective October 6, 2013, based on an agency conclusion that he was unduly restricting his work availability. After due notice was issued, a hearing was held on January 15, 2014. Mr. Felix participated. The employer indicated in writing that it was waving its participation in the hearing. Spanish-English interpreter Anna Pottebaum assisted with the hearing. Exhibit A was received into evidence.

ISSUE:

Whether the claimant has been able to work and available for work since establishing the reopened claim for benefits that was effective October 6, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adrian Felix established a reopened claim for benefits that was effective October 6, 2013. Since that time, Mr. Felix has made only five job contacts. Since Mr. Felix reopened his claim for benefits he has never made two job contacts per week. Mr. Felix cites pain in his shoulder as an issue affecting his availability for work. Mr. Felix indicates he has permanent medical restrictions that restrict his ability to lift and restrict him from holding items that vibrate.

REASONING AND CONCLUSIONS OF LAW:

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 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Mr. Felix has failed to present sufficient evidence to establish that he has been available for work during any of the weeks since he established his reopened claim for benefits that was effective October 6, 2013. Ms. Felix has not made an active and earnest search for employment since he reopened the claim. Mr. Felix has medical restrictions that negatively impact his availability for work. Mr. Felix has not met the eligibility requirements since he established the reopened claim and is not eligible for benefits. Benefits are denied effective October 6, 2013. Mr. Felix's ineligibility continued as of the January 15, 2014 appeal hearing. Mr. Felix will continue to be ineligible for unemployment insurance benefits until he demonstrates an active and earnest search for new employment and that he is both able to work and available for work.

DECISION:

The Agency representative's November 25, 2013, reference 03 is affirmed. The claimant has not demonstrated that he is available for work or that he has made an active and earnest search for employment since he established the reopened claim for benefits that was effective October 6, 2013. Benefits are denied effective October 6, 2013. The claimant's ineligibility continued as of the January 15, 2014 appeal hearing. The claimant will continue to be ineligible for unemployment insurance benefits until he demonstrates an active and earnest search for new employment and that he is both able to work and available for work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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