

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGO G MCGEE

Claimant

APPEAL NO. 09A-UI-02567-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 11/02/08 R: 01
Claimant: Appellant (1-R)**

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 4, 2009, reference 01, that concluded she was unable to work from November 2 to 22, 2008. A telephone hearing was held on February 25, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Isaiah McGee. Will Seger participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a production worker from August 14, 2007, to October 21, 2008. After October 21, the claimant was on a medical leave of absence from employment. She was released to return to work on November 23 and returned to work part time.

The claimant worked from November 23 to December 19. The claimant believed she did not need to report her wages until she got paid. Therefore, she did not properly report her earnings during that time, which would be determined by taking her hours times her hourly wage. She only reported wages during the week ending December 20, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The claimant admitted that she was unable to work from October 21 through November 22, 2008. In addition, the unemployment insurance rules state that a person who has requested and received a leave of absence from work is not considered available for work during the time the person is on leave. 871 IAC 24.22(2)j.

The claimant is ineligible to receive unemployment insurance benefits from November 2 through November 22, 2008.

There is still an issue as to whether the claimant is eligible for benefits from November 23 to December 20, 2008, and whether the claimant properly reported her earning for these weeks. These issues were not listed on the notice of hearing, and therefore, cannot be determined in this appeal. These issues are remanded to the Agency to investigate and make a determination.

DECISION:

The unemployment insurance decision dated February 4, 2009, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits from November 2 through November 22, 2008. The issues of whether the claimant is eligible for benefits from November 23 to December 20, 2008, and whether the claimant properly reported her earnings for these weeks is remanded to the Agency to investigate and make a determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css