

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY MONTGOMERY
Claimant

APPEAL NO. 13A-UI-08009-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/02/13
Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 2, 2013, reference 01, that concluded he was not able to work due to an injury. A telephone hearing was held on August 13, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Dzermal Grcic participated in the hearing on behalf of the employer. Exhibit A was admitted into the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from January 4, 2010, to January 25, 2013. The job involves standing and regularly lifting 15-20 pounds.

The claimant broke his ankle in a non-work-related injury. He requested and was granted a medical leave of absence from January 27 to June 3, 2013.

The claimant was released by his doctor to return to work on June 3. He worked a partial shift on June 3 but could not tolerate the standing required in his job and left work before the end of this shift. A doctor faxed in a note stating the claimant was limited to sit-down work from June 4 through 18. A doctor faxed a second note dated June 18 stating that the claimant was limited to light-duty work with no lifting of more than three to five pounds and no standing over two hours per day. The claimant has had the same restrictions up to the time of the hearing.

Since he left work on June 3, the claimant has not reported to work and offered to return to work because he knows he is unable to perform his job. The employer understood the claimant was still on a medical leave of absence until the leave of absence ended August 9, 2013.

The claimant filed a claim for unemployment insurance benefits effective June 2, 2013.

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 § 96.4-3.

871 IAC 24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

At the time the claimant filed for unemployment insurance benefits he was on a leave of absence due to a non-work injury. He had severe work restrictions that would prevent him from working in anything other than a sit-down job. Those restrictions continued until the time of the hearing. He was, therefore, not able to and available for work as require by the unemployment insurance law.

If circumstances change and the claimant believes the disqualification should be lifted, the claimant should contact his local Workforce Development Center with medical document showing that the restrictions have been lifted allowing him to return to work.

DECISION:

The unemployment insurance decision dated July 2, 2013, reference 01, is affirmed. The claimant is ineligible for benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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