

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZETRA L RATLIFF
Claimant

APPEAL NO. 09A-UI-16795-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

Original Claim: 10/04/09

Claimant: Appellant (4)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Zetra L. Ratliff (claimant) appealed a representative's October 30, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits because she was not able and available for work after a separation from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant worked full-time as a laborer in the employer's Waterloo, Iowa, pork processing plant on the first shift. Her last day of work was September 17, 2009. She was discharged at that time due to attendance. Her final absences were due to complications from a shoulder injury. Beginning about August 29, she was physically unable to do any work other than standing and observing. She continued attempting to report for work but was in great pain, for which she took pain medication that made her drowsy and unable to report for work.

On October 22 she again saw her doctor, who gave her a release to do more work effective that date. Her restrictions as of that date were to not lift more than ten pounds, no work at or above shoulder level, and limited pushing, pulling, and reaching. Her need for the pain medications, which had made her too drowsy to work, was also greatly diminished at this point. She has since made applications for various jobs she believes she can do within her restrictions.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant who is unable to work due to illness or injury is not eligible for unemployment insurance benefits until she has recovered sufficiently to work in some gainful employment. 871 IAC 24.23(1); Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that she is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform work. 871 IAC 24.22(1)a. The claimant has provided such evidence that she can perform some work as of October 22, 2009. The first week this release would apply to the majority of the work week is the week beginning October 25.

DECISION:

The representative's October 30, 2009 decision (reference 02) is modified in favor of the claimant. The claimant is sufficiently able to work and available for work effective the week beginning October 25, 2009. The claimant is then qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw