

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIANA GUTIERREZ**

Claimant

**APPEAL NO. 11A-UI-14129-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 09/18/11**

**Claimant: Respondent (4)**

Section 96.4-3 – Eligibility for Benefits

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. filed a timely appeal from an unemployment insurance decision dated October 17, 2011, reference 01, that allowed benefits to Mariana Gutierrez effective September 18, 2011 upon a finding that she was available for work. After due notice was issued, a telephone hearing was held November 21, 2011 with Ms. Gutierrez participating. She was represented by Mary Hamilton, Attorney at Law. Human Resources Manager Will Sager participated for the employer. Ike Rocha was the interpreter.

**ISSUE:**

Is the claimant eligible for unemployment insurance benefits?

**FINDINGS OF FACT:**

Tyson Fresh Meats placed Mariana Gutierrez on a leave of absence that extended from September 22, 2011 through October 4, 2011. Ms. Gutierrez had not requested the leave of absence. It was imposed because Ms. Gutierrez had not been able to qualify for jobs that she had bid on. Her employment ended on November 5, 2011. A fact-finding interview on the separation from employment is pending.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether Ms. Gutierrez is eligible for unemployment insurance benefits from September 18, 2011, the date of her claim for unemployment insurance benefits until her separation from employment on November 5, 2011. For the reasons that follow, the administrative law judge concludes that Ms. Gutierrez is eligible for benefits from September 18, 2011 through October 1, 2011.

Iowa Code § 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".

The employer characterized the claimant's temporary separation as a leave of absence, while noting that the leave of absence was imposed by the employer. The evidence persuades the administrative law judge that the claimant was in essence on a temporary layoff during the weeks in question. Therefore, the administrative law judge concludes that Ms. Gutierrez is eligible for benefits from her original claim date, September 18, 2011 through October 1, 2011, the end of the week prior to her return to work.

**DECISION:**

The unemployment insurance decision dated October 17, 2011, reference 01, is modified. The claimant is entitled to receive unemployment insurance benefits for the period September 18, 2011 through October 1, 2011, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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