

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HERSEY JACKSON**  
Claimant

**APPEAL NO: 14A-UI-04254-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 03/30/14**

**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Hersey Jackson (claimant) appealed a representative's April 18, 2014 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits by not being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 13, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that Tyson Fresh Meats, Inc. (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. 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 started working for the employer on February 18, 2013. He worked full time as a ham boner at the employer's Waterloo, Iowa pork processing facility. His last physical day of work was March 13, 2014.

The claimant was injured at work on that date, suffering a cut to his index finger requiring stitches. He had the stitches out on the morning of March 24, and was released by his doctor as able to return to work immediately. He took the doctor's release to the employer and sought to return to work that same day. However, he was informed that he had been placed on a leave of absence until March 31.

When he then sought to return to work on March 31, the employer informed him that he was discharged. In another decision also issued on April 18, 2014 (reference 01) a representative concluded that the separation from employment was not disqualifying to the claimant; the employer has not appealed that decision.

The claimant established an unemployment insurance benefit year effective March 30, 2014. During that same benefit week which ended on Saturday, April 5, the claimant attempted employment at a new employer, Premier Casting Services, at which he worked about 10 hours. Another representative's decision was issued on April 28, 2014 (reference 02), which concluded that the claimant had a disqualifying separation from that employment as of April 5, 2014. As of the date of the hearing in this matter the claimant had not appealed the decision disqualifying him based on his separation from that new employer.

**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. To be found able to work, "[a]n 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." *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 at least as of March 30 he was ready, able, and available to work in some gainful employment. Benefits would be allowed, if the claimant is otherwise eligible. However, since there has been a determination that there was a subsequent disqualifying separation which was already effective as of April 5, the claimant is currently not otherwise eligible.

**DECISION:**

The representative's April 18, 2014 decision (reference 03) is modified in favor of the claimant. The claimant was able to work and available for work effective March 30, 2014. The claimant would be qualified to receive unemployment insurance benefits, if he was otherwise eligible, which he currently is not due to the subsequent separation from another employer.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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