

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

EKREM SULJEVIC
1103 BOURLAND AVE
WATERLOO A 50702

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01890-CT
OC: 01/02/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Ekrem Suljevic filed an appeal from a representative's decision dated February 10, 2005, reference 01, which denied benefits effective January 2, 2005 on a finding that he was not able to work. After due notice was issued, a hearing was held by telephone on March 23, 2005. Mr. Suljevic participated personally. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing. Mr. Suljevic's daughter, Adela Suljevic, participated as an interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Suljevic has been employed by Tyson Fresh Meats, Inc. since December 27, 2000. On or about January 4, 2005, he saw the company nurse with complaints regarding his back and leg. He was sent to the company doctor who determined that his condition was not work-related and referred him to his family doctor. Mr. Suljevic's family doctor advised him not to work from January 4 through February 14, 2005. Therefore, he was placed on a leave of absence from work and returned on February 16, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Suljevic was entitled to receive job insurance benefits on his claim filed effective January 2, 2005. In order to receive benefits, an individual must be physically able to work. See Iowa Code section 96.4(3). Mr. Suljevic was advised by his doctor not to work from January 4 through February 14. Because of this advice, the administrative law judge must conclude that he was not able to work during this time. As such, he was not entitled to job insurance benefits as of January 2, 2005.

The hearing notice listed timeliness of the appeal as an issue. This was noted in error as the appeal was, in fact, timely filed. It was due on February 20, 2005, a Sunday. Therefore, the deadline would be extended to the following Monday, February 21, 2005. The envelope in which the appeal was mailed is postmarked February 21, 2005.

DECISION:

The representative's decision dated February 10, 2005, reference 01, is hereby affirmed. Mr. Suljevic is denied benefits effective January 2, 2005 as he was not able to work.

cfc/kjf