

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL EYENGA**  
Claimant

**APPEAL NO. 17A-UI-08606-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 07/23/17**  
**Claimant: Appellant (1R)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Rachel Eyenga filed a timely appeal from the August 18, 2017, reference 02, decision that denied benefits effective August 13, 2017, based on the claims deputy's conclusion that Ms. Eyenga was unable to work due to illness. After due notice was issued, a hearing was held on September 8, 2017. Ms. Eyenga participated in the hearing. The employer did not register a telephone number for the hearing and did not participate. A CTS Language Link French-English interpreter assisted with the hearing. Exhibit A was received into evidence. The administrative law took official notice of the following Agency administrative records: KCCO, DBRO and August 16, 2017 fact-finding record.

**ISSUES:**

Whether Ms. Eyenga has been able to work and available for work since August 13, 2017.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Rachel Eyenga established a claim for benefits that was effective July 23, 2017. Ms. Eyenga made weekly claims for the six consecutive weeks between July 23, 2017 and September 2, 2017. Ms. Eyenga discontinued her claim after the benefit week that ended September 2, 2017.

Ms. Eyenga was most recently employed by Tyson Fresh Meats as a full-time production worker. Ms. Eyenga worked for that employer for two years and four months and separated from the employment on July 18, 2017. The separation from the employment occurred in the context of complications Ms. Eyenga was experiencing late in her pregnancy. After Ms. Eyenga established her unemployment insurance claim, she made weekly claims and received benefits for the three weeks between July 23, 2017 and August 12, 2017. Ms. Eyenga is a French-speaking immigrant and has relied upon her brother to make her weekly unemployment insurance claims. Ms. Eyenga and/or her brother have knowingly provided false information to Iowa Workforce Development in connection with the weekly claims.

On August 16, 2017, Ms. Eyenga participated in a fact-finding interview with a Workforce Development claims deputy. At the time of the fact-finding interview, Ms. Eyenga told the

claims deputy, through the interpreter, that she was discharged from the employment after she needed to leave her work duties due to pregnancy related pain and crying. At the time of the fact-finding interview, Ms. Eyenga, told the claims deputy, "Right now I am staying home because I have 10 days before I give birth to the baby." Ms. Eyenga also told the claims deputy, "My plan after I have the baby is to take four weeks off." It was this conversation with the claims deputy that triggered the decision from which Ms. Eyenga appeals in this matter.

Ms. Eyenga was unable to work due to pregnancy complications prior to the birth of her child and did not search for work prior to the birth of her child on August 24, 2017. Despite that, Ms. Eyenga and/or her brother knowingly made false weekly claims for the weeks that ended August 19 and 26, 2017. For each week, they reported that Ms. Eyenga had made two job contacts when she had made no job contacts. During the September 8, 2017 appeal hearing, Ms. Eyenga again knowingly provided false information concerning her availability for work and her work search activities before and after the birth of the baby. While Ms. Eyenga asserts that she made two job contacts for the week that ended September 2, 2017, that assertion is wholly unreliable. The weight of the evidence establishes that Ms. Eyenga has not engaged in an active and earnest search for work since she established her claim for benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Ms. Eyenga did not meet the able and available requirements for the three weeks at issue in this appeal. Those weeks were the three weeks between August 13, 2017 and September 2, 2017. Ms. Eyenga was unable to work during the two-week period of August 13, 2017 through August 26, 2017 due to complications related to her pregnancy. Ms. Eyenga did not look for work during those weeks and was not available for work during those weeks. Ms. Eyenga has presented insufficient evidence, and insufficiently reliability evidence, to establish that she was available for work during the benefit week that ended September 2, 2017. From August 24, 2017 onward, Ms. Eyenga has been occupied with caring for a newborn child.

During the appeal hearing, Ms. Eyenga testified that she had been consistently searching for new employment since she established her claim for benefits. Mr. Eyenga repeated the assertion a number of times during the hearing. However, when asked for the particulars of her job search, Ms. Eyenga's testimony changed substantially. Such changes occurred multiple times during the hearing and revealed Ms. Eyenga's assertions of an active and earnest job search to be false. Ms. Eyenga eventually conceded that she had not looked for work prior to the benefit week that ended September 2, 2017.

Ms. Eyenga did not meet the able and available requirements during the three-week period between August 13, 2017 and September 2, 2017 and is not eligible for benefits those weeks.

This matter will be remanded to the Benefits Bureau for adjudication of Ms. Eyenga's ability to work, availability for work, and whether she engaged in an active and earnest search for work during the three-week period of July 23, 2017 through August 12, 2017. The Benefits Bureau may also need to determine whether Ms. Eyenga has been overpaid benefits.

This matter will also be remanded to the Investigation and Recovery Bureau for determination of whether the claimant engaged in fraud in connection with her claim for benefits.

**DECISION:**

The August 18, 2017, reference 02, decision is affirmed. The claimant did not meet the able and available requirements effective August 13, 2017 and is not eligible for benefits for the three claim weeks between August 13, 2017 and September 2, 2017.

This matter is remanded to the Benefits Bureau for adjudication of the claimant's ability to work, availability for work, and whether the claimant engaged in an active and earnest search for employment during the three-week period of July 23, 2017 through August 12, 2017. The Benefits Bureau may also need to determine whether the claimant has been overpaid benefits.

This matter is remanded to the Investigation and Recovery Bureau for determination of whether the claimant engaged in fraud in connection with her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs