

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SULAYMAN FATTY**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL NO. 21A-UI-05080-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 8, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on April 19, 2021. Claimant participated personally. Employer participated by Kimberly.

**ISSUES:**

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired by employer on November 4, 2019. Claimant contracted Covid and was off from work from April 10, 2020 until June 1, 2020. During this time period claimant continued to be paid by his employer, either through direct pay or through employer's 3d party responsible for doling out Covid benefits payments. While claimant was out of work with Covid he was not able and available to work.

**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. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant has not established the ability to work for the time period when he was off with Covid from April 10 through June 1, 2020. Benefits are withheld for that period. Benefits shall be allowed effective June 4, 2020 if claimant is other wise eligible for benefits.

It appears that claimant has applied for and received benefits for a period of time while he was working either for this employer or for a subsequent employer. This matter will be remanded to the benefits bureau for a determination if claimant has received unemployment benefits while working.


*Note to Claimant:* Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 50 weeks of unemployment benefits. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. Claimant began a PUA application in May, but said application was never successfully completed and submitted. The administrative law judge makes no statement as to an application begun at that time and finished in 2021 would allow claimant to be eligible for PUA benefits.

**DECISION:**

The decision of the representative dated March 8, 2021, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective April 10, 2020 through June 1, 2020 as he was not able and available for work. Claimant is eligible to receive benefits after June 1, 2020, provided claimant meets all other eligibility requirements.

**REMAND:**

This matter is remanded to the fact finder for determination as to whether claimant has applied for and received unemployment benefits while receiving wages.



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Blair A. Bennett  
Administrative Law Judge

April 23, 2021  
Decision Dated and Mailed

bab/kmj