

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

YULIESKA RISCO CARDOSO
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 15A-UI-13247-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/15
Claimant: Appellant (1)

Iowa Admin. Code Ch. 871 r. 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 2, 2015, reference 01, which held claimant to be on an approved leave of absence. After due notice, a hearing was scheduled for and held on December 17, 2015. Claimant participated personally. Employer did not answer the call from the administrative law judge. Claimant's Exhibit A was admitted into evidence. Interpretive services were provided for the court's convenience by Ike Rocha.

ISSUE:

The issue in this matter is 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 injured at work in August of 2015. Said injury was to claimant's knee. Claimant kept working after her injury with restrictions as to weight and turning. Said restrictions were in place until September 3, 2015. On that date, claimant was released to return to work with no restrictions. On September 4, 2015 claimant took a period of time off from work to have her appendix removed. Claimant returned to work on November 10, 2015. Claimant worked nine hours that day and tried to work the next day. When claimant returned to work, she brought a doctor's note to the nurse restricting her activities and putting a weight restriction on her work. After receiving this note, employer removed claimant from work until her restrictions were lifted. To date the restrictions are still in effect, but claimant wishes to return to light-duty work.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Inasmuch as the most recent injury to the appendix was not work-related and the treating physician has not released the claimant to return to work without restrictions, the claimant has not established the ability to work. Claimant was cleared to return to work without restrictions the day before her appendix surgery occurred. Since that time claimant has not shown that she can work without restrictions. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated December 2, 2015, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective November 8, 2015.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css