

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLEEKIA M DAHN
Claimant

APPEAL NO. 12O-UI-00472-VS

TYSON FRESH MEATS INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/11
Claimant: Appellant (2)**

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated October 18, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits upon a finding that he had voluntarily left employment without good cause attributable to the employer. An administrative law judge decision was filed on November 16, 2011, which held that the claimant was ineligible for unemployment insurance benefits for the period of September 18, 2011, through November 5, 2011. The claimant appealed this decision to the Employment Appeal Board (EAB). The EAB remanded the case for a new hearing because the claimant had not received notice of the prior hearing. The claimant requested an in-person hearing. After due notice, a hearing was scheduled for and held on March 13, 2012, in Davenport, Iowa. Claimant participated. The claimant was represented by David Newell, Attorney at Law. The employer notified the Appeals Bureau that it would not be participating in the hearing due to the distance needed to travel for an in person hearing. The record consists of the testimony of Gleeikia Dahn and Claimant's Exhibits A-D.

ISSUE:

Whether the claimant is eligible for unemployment insurance benefits from September 18, 2011, through the week ending November 5, 2011.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant filed a claim for unemployment insurance benefits effective September 18, 2011. At that time he had been placed on an involuntary medical leave of absence from employment with Tyson Fresh Meats, Inc. The claimant had sustained a work injury to his back but had returned to work from that injury. He then developed a right knee problem, which the employer did not accept as work related. The claimant had restrictions imposed on him that would not permit him to return to his regular job. The employer told the claimant that his only option was to go on Family Medical Leave Act (FMLA). The claimant did not want to do this and felt that he could work many different jobs at Tyson. The claimant did return to work on November 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

In order to be eligible to receive benefits, an individual must be able to work and available for work and earnestly and actively seeking work. Iowa Code section 96.4-3. As a general rule, an individual who is on a negotiated leave of absence is considered to be unavailable for work. See 871 IAC 24.22(2)j. In this case the evidence established that the claimant was on an involuntary medical leave of absence. The claimant had light-duty restrictions from a non-work-related injury and the employer could not or would not accommodate those restrictions. The claimant testified that there were many jobs that he could perform at the employer's plant and that he was able to work. Since the employer imposed the medical leave on the claimant and he was able and available for work, benefits are allowed for the period of September 18, 2011, through November 5, 2011.

DECISION:

The decision of the representative dated October 18, 2011, reference 01, is reversed. The claimant is eligible for unemployment insurance benefits for the period of September 18, 2011, through November 5, 2011.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css