

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ZACH L FOWLER**

Claimant

**APPEAL 14A-UI-05517-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 04/06/14**

**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 19, 2014, (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2014. Claimant participated. Employer participated through human resource clerk Kristi Fox.

**ISSUE:**

Was the claimant able to and available for work the week ending April 12, 2014?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance worker and was separated from employment on May 1, 2014. His last day of work was April 28, 2014. On Sunday, April 20 his supervisor Alfredo Vega recorded him as a no-call/no-show. Vega did not participate. Claimant was vomiting so his girlfriend took him to the hospital on Sunday. This recurring illness had happened before without a problem when he missed work for the same reason from April 6 through April 12, 2014. His supervisor did not tell him that the lack of policy enforcement had changed. On Monday, April 21, he brought in paperwork for a medical leave of absence from April 20 through April 28. When he returned, his supervisor told him since he received three points from his no-call/no-show absence, which put him at ten points, which resulted in his termination from employment. The employer has a no-fault attendance policy that assigns all absences at least one point, regardless of reason.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work the week ending April 12, 2014.

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 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(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.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Since claimant was ill and could not work the week ending April 12, 2014, benefits are denied.

**DECISION:**

The May 19, 2014, (reference 03) decision is affirmed. The claimant is not able to work and available for work the week ending April 12, 2014. Benefits are withheld for that week.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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