

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAIBEL FUENTES
Claimant

APPEAL NO. 10A-UI-07883-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

OC: 04-25-10
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 26, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 19, 2010. The claimant did not participate. The employer did participate through Connie Ingraham, Vice-President of Administration and Finance and David Bergeson, Product manager.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a lead worker in the bacon packaging department full time beginning October 16, 2000 through date of hearing as she remains employed. The employer cut the production to four days per week, but provided work for any employee who wanted to work. The claimant chose not to work on Tuesdays when the production line was down. Work was available for the claimant but she chose not to work all the hours when work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 25, 2010.

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".

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant could have worked on Tuesdays when the production line was shut down, but she chose not to do so. Because the claimant chose not to work all the available hours, she is considered not able to and available for work effective April 25, 2010. Accordingly, benefits are denied.

DECISION:

The May 26, 2010 (reference 01) decision is reversed. The claimant is not able to work and available for work effective April 25, 2010. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs