

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN J HOWARD**  
Claimant

**APPEAL NO. 08A-UI-02842-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 01/27/08 R: 03**  
**Claimant: Appellant (5)**

Section 96.4-3 – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Kevin J. Howard (claimant) appealed a representative's March 11, 2008 decision (reference 02) that concluded he was not eligible to receive benefits as of January 27, 2008, because he was ill and unable to work at Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2008. The claimant participated in the hearing. Jim Hook appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant able to and available for work as of January 27 or any subsequent week?

**FINDINGS OF FACT:**

The claimant works for the employer. The claimant presented a doctor's statement and received a medical leave of absence for January 29 through February 7, 2008. The claimant returned to work when this leave of absence ended.

The claimant worked for a while and then had other medical issues. The claimant presented the employer with a doctor's statement and received another leave of absence starting February 25. This leave of absence was extended until March 14. The claimant worked one day during the week ending March 15 and he worked on March 17. The claimant has not worked since March 17 because of back problems and other medical issues. He has called the employer everyday he was scheduled to work since March 17 notifying the employer he was unable to work. As of the date of the hearing, the claimant has medical statements for the absences he has had since March 18, but had not yet provided those to the employer. As of the date of the hearing, the claimant's doctor has not released him to return to work.

The claimant established a claim for benefits during the week of January 27, 2008. He filed claims for the weeks ending February 2, 9. He reopened his claim the week of February 24, and filed claims for the weeks ending March 1 through 29, 2008.

## **REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. Since the claimant was on a leave of absence from January 29 through February 7, the law presumes he was ineligible to receive benefits when he was on leave of absence. 871 IAC 24.22(2)(j). The claimant was on the leave of absence a majority of the week for the weeks ending February 2 and 9. As a result, he is not eligible to receive benefits these two weeks.

The claimant then returned to work and did not file any weekly claims until the week ending March 1. The claimant reopened his claim during the week of February 24, 2008. The evidence establishes the claimant was on another leave of absence from February 25 through March 14, 2007. Since the claimant was on another medical leave of absence, the evidence again shows he was not able to work from February 25 through March 14. This means for the weeks ending March 8 and 15, the claimant was not able to work the majority of these weeks and is not eligible to receive benefits these weeks.

Even though the claimant filed claims for the weeks ending March 22 and 29, he has contacted the employer every day he has been scheduled to work since March 18 to report that he is unable to work. The claimant may have doctor's statements verifying he is unable to work as of March 18, 2008. While the claimant may have been available to work, he was not able to work these weeks. Therefore, the claimant is ineligible to receive benefits for the weeks ending March 22 and 29, 2008.

## **DECISION:**

The representative's March 11, 2008 decision (reference 02) is modified but the modification has no legal consequence. Based on a temporary medical situation in which the claimant received a leave of absence, the claimant was not able to work and is not eligible to receive benefits the weeks ending February 2 and 9, 2008. The claimant returned to work but again requested a leave of absence that started February 25, 2008. Even though the claimant may have worked one or two days since February 24, he was on a medical leave of absence February 25 through March 14. Since March 18 the claimant has not been able to work and is not eligible to receive benefits. The claimant shall remain ineligible until he reopens his claim for benefits and establishes that he is able to and available for work.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css