

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIA G NIETO MENENDEZ**  
Claimant

**APPEAL 19A-UI-07300-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHFIELD FRESH MEATS CORP**  
Employer

**OC: 08/11/19**  
**Claimant: Appellant (2)**

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/appellant filed an appeal from the September 12, 2019, (reference 03) unemployment insurance decision that denied benefits because the claimant was not able and available for work due to injury. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2019. The hearing was held together with Appeal 19A-UI-07299-JC-T and 19A-UI-06896-JC-T. The claimant participated personally and with the assistance of a Spanish interpreter (Laura, #10870) from CTS Language Link. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits 1-4 were admitted into evidence. Based on the evidence, the arguments presented, 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 work and available for work effective August 11, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has performed work as laborer/in production for this employer since 2009. She last performed work for Smithfield Fresh Meats Corporation on July 24, 2019. The claimant established her claim effective August 11, 2019 in response to her employer not accommodating medical restrictions related to two work related injuries. (See 19A-UI-07299-JC-T, Claimant Exhibits 1-4).

The claimant's medical restrictions include taking a five minute break each hour during work to perform stretches for her knee, no repetitive use of arms, high speed assembly and no lifting greater than ten pounds. She is willing to perform full-time work within her restrictions. The

claimant is currently listed as temporarily unemployed or Group Code 3 and therefore not required to make weekly job search contacts at this time.

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

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). The rules also provide that an individual is disqualified for being unavailable to work if an individual has a medical report stating the individual is unable to work. 871 IAC 24.23(6).

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.

To be found "able to work" for purposes of unemployment compensation benefits, individual must be physically and mentally able to work in some gainful employment, not necessarily in individual's customary occupation, but which is engaged in by others as means of livelihood. Sierra v. Employment Appeal Bd., 1993, 508 N.W.2d 719.

Based on the evidence presented, the claimant has established that she is able to and available to work in some reasonably suitable, comparable, gainful, full-time employment, which is generally available in the labor market in which she resides, even given her medical restrictions. As such, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 12, 2019, (reference 03) initial decision is reversed. The claimant is able and available for work effective August 11, 2019. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn