

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERALD M HUGHES**  
Claimant

**APPEAL NO. 11A-UI-11165-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE FOODS GROUP LLC**  
Employer

**OC: 07/10/11  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated August 18, 2011, reference 01, which denied unemployment insurance benefits, finding the claimant was not able to perform work due to an injury and denying benefits as of July 10, 2011. After due notice was issued, a telephone hearing was held on September 15, 2011, at which time the claimant participated personally. The employer participated by Ms. Wilda Lampe, human resource specialist.

**ISSUE:**

At issue is whether the claimant is able and available for work within the meaning of the Iowa employment security law.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Gerald Hughes began employment with Pinnacle Food Group on July 2, 2007, and continues to be employed by the company on medical leave of absence at the time of hearing. Mr. Hughes is employed as a full-time production technician and is paid by the hour. The claimant's last day on the job performing services was February 10, 2011.

On February 11, 2011, Mr. Hughes re-injured a previously existing, non-work-related injury to his thumb. Due to the nature of the re-injury, the claimant was required to undergo surgery and associated restorative medical services.

Because Mr. Hughes' injury was non-work-related, employer policy required him to be fully released to perform the job duties of the position that he had with the company before he could return to work. Mr. Hughes was aware of that job requirement.

On August 30, 2011, Mr. Hughes would have been eligible to accept a bid position into a job that would have fit the 15-pound lifting limitation that had been imposed by his physician due to his non-work-related injury. The company was willing to allow Mr. Hughes to return to work and perform those duties, as his limitations fit the job requirements. Mr. Hughes did not believe that

he could perform the duties and went back to his doctor, and it was then determined that he had an eight-pound lifting limit and was ineligible to return to work because he was not fully released to perform the job duties of his position with the company.

At the time of hearing, Mr. Hughes continues to be off work and is limited to a light-duty work release.

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

For the reasons that follow, the administrative law judge concludes the claimant is temporarily separated from Pinnacle Foods Group without good cause attributable to the employer. The claimant has not been released to return to full work duties and the employer is not obligated to accommodate a non-work-related medical condition.

Iowa Code section 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 24.22(2)j(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

A leave of absence negotiated with the consent of both parties, the employer and the employee, is deemed a period of voluntary unemployment for the employee-individual and the individual is considered ineligible for benefits for the period. See 871 IAC 24.22(2)j.

For the reasons stated herein, the administrative law judge concludes that Mr. Hughes is not able and available for work within the meaning of the Employment Security Act. Benefits are therefore denied as of July 10, 2011.

**DECISION:**

The representative's decision dated August 18, 2011, reference 01, is affirmed. The claimant is ineligible for benefits effective July 10, 2011, as he does not meet the availability requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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