

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESUS FRANCO**  
Claimant

**APPEAL NO: 18R-UI-01707-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 10/29/17**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 14, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 28, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Joel (10092). The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant injured his back October 15, 2017, and believed he was on FMLA as his chiropractor completed the paperwork and submitted it to the employer. The claimant also called in and reported his absences every day. When the claimant went back to work he was informed the employer never received the FMLA paperwork and did not have a record of him calling in and consequently his employment was terminated because the claimant was deemed to have exceeded the allowed number of attendance points.

The claimant was released to return to work without restriction prior to October 29, 2017, the effective date of his claim.

**REASONING AND CONCLUSIONS OF LAW:**

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

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".

The claimant had recovered from his back injury by the time he attempted to return to work but instead was discharged from his job for attendance issues. The claimant has not been under any restrictions since the effective date of his claim. He is able and available for work. Accordingly, benefits are allowed.

**DECISION:**

The December 14, 2017, reference 02, decision is reversed. The claimant is able to work and available for work effective October 29, 2017. Benefits are allowed.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn