

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAYA BAJGAI
Claimant

APPEAL NO: 15A-UI-05051-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARZETTI FROZEN PASTA INC
Employer

OC: 12/07/14
Claimant: Respondent (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 20, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 5, 2015. The claimant 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. Joan Tapps, Assistant Human Resources Manager and Sam Krauss, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

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 was employed as a full-time production technician I for Marzetti Frozen Pasta from June 26, 2011 to May 8, 2015. He sustained a non-work related injury September 18, 2014, and was off work until he received a full release to return to work April 13, 2015 (Employer's Exhibit One). The employer planned to have him return to work after he completed the required paperwork, drug screen and fitness for duty physical. Prior to those tasks being completed by the claimant, however, the claimant's attorney sent the employer an email stating the claimant was concerned the job was too physically demanding for him and he was taking a position with Wal-Mart (Employer's Exhibit Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able 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 only issue involved in this hearing is whether the claimant is able and available for work. Given the fact the claimant received a full release to return to work from his treating physician, and he is able to perform some type of work, even if he felt he could not perform his previous job with the employer, the administrative law judge finds the claimant is able and available for work as that term is defined by Iowa law.

DECISION:

The April 20, 2015, reference 02, decision is affirmed. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/mak