

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO C CABRERA
Claimant

APPEAL NO. 07A-UI-07520-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**OC: 08/01/07 R: 01
Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 1, 2007, reference 01, that concluded he was unable to work. A telephone hearing was held on August 21, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Mary Hamilton. Ike Rocha was the claimant's interpreter. Becky Jacobson participated in the hearing on behalf of the employer with a witness, Rhonda Straight.

ISSUES:

Was the claimant able to and available for work?
Has the claimant separated from employment under disqualifying condition?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from August 23, 2000, to March 3, 2007. The claimant stopped working due to back pain. He requested and was granted a leave of absence under the Family and Medical Leave Act (FMLA) based on his doctor's certification that he was not able to work.

As a result of his back condition, the claimant had spinal surgery. Afterward, the claimant's doctor, Ric Jensen, M.D., periodically faxed the employer medical statements updating the claimant's condition. On July 3, 2007, Jensen prepared a medical statement that said the claimant was released for light duty as of July 9, 2007. That release was faxed to the employer. The claimant may have been able to work part-time but was not able to work full time.

Sometime around July 3, 2007, the claimant's wife called the human resources manager, Becky Jacobson, and asked whether the claimant could come back to work. His wife made the call because the claimant does not speak English well. Jacobson said that the claimant would be allowed to come back to work when his doctor had released him to work. The claimant has not contacted the employer directly or reported to the plant to return to his job.

On July 5, 2007, Jensen prepared another medical statement that stated that the claimant would be off work until re-evaluated on August 10, 2007. On August 10, 2007, the claimant was re-evaluated by Jensen. Jensen took the claimant off work for two months.

The claimant has not quit his employment and the employer has not discharged him. He is considered to be an employee who continues to be on medical leave.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The evidence establishes that the claimant has not quit and the employer has not discharged him. He is considered an employee on medical leave.

The next issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The claimant clearly was unable to work up until the beginning of July 2007. His doctor issued a medical statement on July 3, 2007, that released the claimant for "light-duty" work effective July 9. No specific restrictions were given and it is impossible to know based on this cursory statement whether the claimant was able to perform any full-time jobs that he was qualified for by experience and training. The claimant in fact testified that he was only able to work about four hours per day at that time. Furthermore, on July 5, 2007, the doctor took the claimant completely off work until August 10 and then took the claimant off work for two months. The preponderance of the evidence establishes the claimant was unable to work.

The claimant is ineligible for unemployment insurance benefits effective July 1, 2007. If circumstances change, the claimant is required to reapply for benefits and provide proof that he is able to and available for work in some reasonably suitable, gainful, full-time endeavor that is generally available in the labor market.

DECISION:

The unemployment insurance decision dated August 1, 2007, reference 01, is affirmed. The claimant is ineligible for benefits effective July 1, 2007.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs