

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RAMONCITO S SADIWA
Claimant

APPEAL NO. 19A-UI-05001-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/26/19
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Ramoncito Sadiwa filed a timely appeal from the June 20, 2019, reference 04, decision that denied benefits effective May 26, 2019, based on the deputy's conclusion that Mr. Sadiwa was not available for work due to injury. After due notice was issued, a hearing was held on July 23, 2019. Mr. Sadiwa participated. Christy Chappelier represented the employer and presented additional testimony through Melissa Vanscyoc. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-04999-JTT. Exhibits A and B and Department Exhibits D-1 through D-4 were received into evidence.

ISSUE:

Whether Mr. Sadiwa has been able to work and available for work since he established the original claim for benefits that was effective May 26, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ramoncito Sadiwa established an original claim for benefits that was effective May 26, 2019. Mr. Sadiwa made weekly claims for each of the six weeks between May 26, 2019 through July 6, 2019. For each week of the claim, Mr. Sadiwa reported having made two or more job contacts. Mr. Sadiwa has not made additional weekly claims since he made the claim for the week that ended July 6, 2019.

At the time Mr. Sadiwa established his original claim for unemployment insurance benefits, he had most recently worked for Tyson Fresh Meats as a line production worker. At the time Mr. Sadiwa established the original claim he was on an approved two-week vacation from the Tyson employment that included the week of May 26-31, 2019. During that same two-week period, Mr. Sadiwa was subject to a two-week 10-pound lifting restriction based on an issue with neck pain/strain that his health care provider attributed to the Tyson employment. Mr. Sadiwa notified the employer on Friday, May 31, 2019 of his decision to quit the employment effective immediately.

At the time Mr. Sadiwa established his original claim for benefits, he was suffering from uncontrolled hypertension, as he and his healthcare provider experimented with various medications they hoped would control the hypertension. Shortly before Mr. Sadiwa left the Tyson employment, he was approved for intermittent leave under the Family and Medical Leave Act, based on his hypertension issues. Mr. Sadiwa asserts that he has continued to be significantly impacted by as yet uncontrolled hypertension. Mr. Sadiwa reports that he suffers from headaches and dizziness when standing or walking, that he has to walk "really slow," and that if tries to move a quicker pace he will fall or collapse. Mr. Sadiwa reports that his "head is not right," that he cannot sleep at night, that he feels lethargic and very weak, that he has pain in his legs, back pain, muscle cramps, and has to force himself to do anything. On June 19, 2019, Mr. Sadiwa provided Iowa Workforce Development with a note from his healthcare provider that states Mr. Sadiwa "may return to light duty immediately with the following restrictions: no heavy lifting light duty." Mr. Sadiwa reports that he and his health care provider have agreed that he can only perform sedentary call-center type work.

During the week that ended June 1, 2019, Mr. Sadiwa applied online for three telemarketing/call center jobs. During that same week, Mr. Sadiwa applied for a restaurant waiter and busser job.

For the next five weeks of the claim, Mr. Sadiwa focused his job contacts on work a reasonable person would conclude he cannot perform while dealing with the issues noted above. During that same period, the bulk of Mr. Sadiwa's job "contacts" were limited to phone calls to prospective employers. Mr. Sadiwa did not wish to go to these employers to complete written applications because he wanted to conserve gasoline. During the week that ended June 8, 2019, Mr. Sadiwa called two restaurants to inquire about waiter jobs.

During the week that ended June 15, 2019, Mr. Sadiwa called three restaurants about waiter jobs.

During the week that ended June 29, 2019, Mr. Sadiwa completed an online application for a telephone customer service job and called a restaurant about a waiter job.

During the week that ended July 6, 2019, Mr. Sadiwa called one restaurant about a waiter job and went in-person to another restaurant to inquire about a waiter job.

REASONING AND CONCLUSIONS OF LAW:

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".

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.

Iowa Admin. Code r. 871-24.22(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.

Mr. Sadiwa has not met the able and available requirements during the six weeks when his claim was active. During the week that ended June 1, 2019, Mr. Sadiwa was still employed full-time with Tyson Fresh meats, was on an approved vacation from that employment, and therefore not available for work within the meaning of the law. Mr. Sadiwa is not eligible for benefits for that week. Mr. Sadiwa's testimony regarding his health status following his separation from the Tyson employment indicates that he has not been able to perform work due to illness during the five weeks between Jun 2, 2019 and July 6, 2019. Mr. Sadiwa's testimony regarding the debilitating nature of his hypertension issues during that time is at odds with the June 19, 2019 note from the medical provider. Mr. Sadiwa's testimony regarding the debilitating nature of his hypertension issues rebuts the presumption arising from the medical note that he is able to do light-duty that does not involve heavy lifting. There are problems with Mr. Sadiwa's job search for the five week between June 2, 2019 and July 6, 2019. Though Mr. Sadiwa testified that he and his doctor agreed that he would only be able to perform sedentary, call-center type work, Mr. Sadiwa's job search during those five weeks focused almost exclusively on restaurant waiter positions, something a reasonable person would conclude Mr. Sadiwa would not be able to perform with the restrictions set forth in the medical notes or with the

profound symptoms described by Mr. Sadiwa. Mr. Sadiwa's search for work during the five weeks between June 2, 2019 and July 6, 2019 was not an active and earnest search for work. For the reasons set forth above, benefits are denied effective May 26, 2019. The able and available disqualification continued through the benefit week that ended July 6, 2019. Though there have been no weekly claims for subsequent weeks, the able and available disqualification would continue unless and until Mr. Sadiwa demonstrates that he is physically and mentally able to work, available for work and work referrals, and actively and earnestly seeking new employment.

DECISION:

The June 20, 2019, reference 04, decision is modified as follows. The claimant did not meet the able and available requirements during the six weeks between May 26, 2019 and July 6, 2019, when his claim was active. Benefits are denied effective May 26, 2019 and through July 6, 2019. Though there have been no weekly claims for subsequent weeks, the able and available disqualification would continue unless and until the claimant demonstrates that he is physically and mentally able to work, available for work and work referrals, and actively and earnestly seeking new employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs