

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HTEE SHEE**  
Claimant

**TYSON FRESH MEATS INC.**  
Employer

**APPEAL 22R-UI-03512-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On September 21, 2021, the claimant filed an appeal from the August 2, 2021, (reference 03) unemployment insurance decision that denied benefits based on claimant requesting and granted a leave of absence. Benefits were denied as of May 2, 2021. A default decision was originally entered by the Administrative Law Judge due to claimant failing to appear for the hearing. The Employment Appeal Board remanded the appeal for hearing. The appellant was properly notified of the hearing. A telephone hearing was held on March 7, 2022. The hearing was held together with appeals 22R-UI-03506-CS-T; 22R-UI-03507-CS-T; 22R-UI-03509-CS-T and 22R-UI-03511-CS-T and combined into one record. The claimant participated personally through CTS Language Link Karen interpreter Panom (Id. No. 93489292). The Employer did not call in to participate during the hearing. Exhibit A was admitted into the record. The administrative law judge took official notice of the administrative file.

**ISSUES:**

- I. Is claimant's appeal timely?
- II. Is the claimant able to and available for work?
- III. Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on August 2, 2021. The appellant did not receive the decision. The first notice of disqualification was when claimant called Iowa Workforce Development (IWD) to inquire about the status of her claim. The appeal was sent after that communication of that decision.

Claimant began working for employer on August 3, 2015. Claimant last worked full-time in production. On or about May 2, 2021, claimant began experiencing high blood pressure. Claimant went to her doctor and her doctor restricted her from working for a few weeks. Claimant attempted to return to work but after a day claimant was experiencing high blood pressure. Claimant was sent home because of her high blood pressure. Claimant has been diagnosed with heart disease. Claimant attempted to return to work after May 29, 2021, and worked for a month. Claimant has since separated from the employer. Claimant's last week that she filed for benefits was the week ending May 29, 2021.

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

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant called IWD to inquire into the status of her claim and she found out she was disqualified. Claimant filed an appeal after she received notice she was disqualified. Claimant's appeal is timely.

The next issue is whether the claimant was available for work effective May 2, 2021. The administrative law judge concludes claimant was not available for work. Benefits are denied as of May 2, 2021.

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. 871-24.23(1) and (35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that they are able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant testified that she began experiencing high blood pressure and her doctor restricted her from working for a few weeks. Claimant testified that she attempted to return to work but her blood pressure increased and she could not work. Claimant could not provide specific dates that she was off work. Claimant testified the employer's nurse sent her home, however, claimant could not provide a date that she was sent home. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)). Claimant was ill and was under her doctor's care. As a result, claimant is not available for work under Iowa law. Accordingly, she is not eligible for unemployment insurance benefits.

**DECISION:**

The claimant's appeal is timely.

The August 2, 2021, (reference 03) unemployment insurance decision is AFFIRMED. The claimant is not able to work and available for work effective May 2, 2021. Benefits are denied.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

March 22, 2022  
Decision Dated and Mailed

cs/mh

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.