

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DINA M FLORES
Claimant

APPEAL NO. 13A-UI-07183-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/12/13
Claimant: Appellant (1-R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Dina Flores filed a timely appeal from the June 17, 2013, reference 01, decision that denied benefits effective May 12, 2013, based on an agency conclusion that she was unable to perform work due to injury. After due notice was issued, a hearing was held on July-17, 2013. Ms. Flores participated. Teri Wray represented the employer. Spanish-English interpreter Anna Pottebaum assisted with the hearing. Exhibit A was received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dina Flores established a claim for benefits that was effective May 12, 2013, but has not received benefits. Ms. Flores most recently worked for employer's Tyson Fresh Meats, Inc. Ms. Flores last performed work for that employer on May 10, 2013. Ms. Flores was a full-time production line worker. Ms. Flores suffered a workplace injury in July 2012, when she fell. Ms. Flores underwent surgery on her right knee in October 2012 and underwent surgery on her left knee in January 2013. Ms. Flores was subsequently released to return to work without restrictions and returned to her former production line duties. During her shift on May 10, 2013, Ms. Flores asked to go to the nurses' station. Instead, Ms. Flores was summoned to a meeting with the employer's Human Resources Manager, Jim Hook. Mr. Hook sent Ms. Flores home indefinitely despite Ms. Flores' request that she be allowed to remain at the workplace and continue performing her duties. The employer has since deemed Ms. Flores on a leave of absence, while Ms. Flores asserts she was laid off. The employer expects Ms. Flores to bid on a job and return to the employment within a year. Ms. Flores had not sought any other employment. Instead, Ms. Flores takes the position that the employer is obligated to provide her with unemployment insurance benefits in light of her previous workplace injury.

On June 19, 2013, Ms. Flores had an initial medical appointment with a doctor at Covenant Clinic Family Practice in Waterloo. That doctor had no previous involvement in Ms. Flores' medical care. That doctor provided Ms. Flores with a cursory document that indicated Ms. Flores was released to return to work with light duty for six months.

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".

871 IAC 24.22(1)a, (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.

(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.

(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.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The employer witness lacked personal knowledge concerning the events that led to Ms. Flores no longer performing work for the employer after May 10, 2013.

The weight of the evidence indicates that Ms. Flores is not on a leave of absence that she requested and that her absence away from Tyson Fresh Meats is involuntary. This matter will be remanded to the Claims Division to determination of the exact nature of the separation that occurred on May 10, 2013 and its impact on the claimant's eligibility for benefits and the employer's liability for benefits.

Ms. Flores had presented insufficient evidence to establish that she has been able to work available for work since she established her claim for unemployment insurance benefits. Ms. Flores has not looked for work. Ms. Flores appears to be waiting to return to Tyson Fresh Meats, but has not made any further attempt to return to Tyson Fresh Meats. Ms. Flores has presented a doctor's note indicating she can only perform light-duty, but has provided nothing to establish what light-duty work she is able to perform. Ms. Flores has in essence elected to sit on her hands while she asserts simply that the employer owes her unemployment insurance benefits. Unfortunately, that is not how the unemployment insurance law or system works. Benefits are denied effective May 12, 2013 based on Ms. Flores' failure to demonstrate that she is able to work and available for work.

DECISION:

The agency representative's June 17, 2013, reference 01, decision is affirmed. Benefits are denied effective May 12, 2013. The claimant has not demonstrated that she has been able to work and available for work since establishing her claim for benefits.

This matter is remanded to the Claims Division for adjudication of the claimant's May 10, 2013 separation from the employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs