

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JO A WESLEY
Claimant

APPEAL NO. 18A-UI-07973-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/17/18
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jo Wesley filed a timely appeal from the July 18, 2018, reference 01, decision that denied benefits effective June 17, 2018, based on the Benefits Bureau deputy's conclusion that Ms. Wesley was unable to perform work due to injury. After due notice was issued, a hearing was held on August 15, 2018. Ms. Wesley participated. Susan Pfeifer represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: database readout (DBRO) and continued claims (KCCO).

ISSUE:

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: Jo Wesley established an original claim for benefits that was effective June 17, 2018. Ms. Wesley made weekly claims for the four-week period of June 24, 2018 through July 21, 2018. Ms. Wesley then discontinued making weekly claims.

Ms. Wesley was most recently employed by Tyson Fresh Meats, Inc. and last performed work for that the employer on April 16, 2018. Before Ms. Wesley went off work, she began to experience pain and swelling in her hands.

Since April 17, 2018, Ms. Wesley had been under the care of a physician and has not been released to return to work. On April 17, 2018, Ms. Wesley's primary care doctor took her off work through May 1, 2018 in connection with a diagnosis of bilateral carpal tunnel syndrome. On April 26, 2018, Ms. Wesley's primary care doctor continued Ms. Wesley off work through May 10, 2018. Ms. Wesley's doctor thereafter continued her off work and referred her to an orthopedic specialist. On May 21, 2018, Ms. Wesley underwent surgery on both hands to address the carpal tunnel issues. On May 30, 2018, the orthopedic surgeon continued Ms. Wesley off work until July 2, 2018. On June 21, 2018, the orthopedic surgeon continued

Ms. Wesley off work until her next appointment. On June 27, 2018, the orthopedic surgeon continued Ms. Wesley off work until further notice. On July 11, 2018, the orthopedic surgeon continued Ms. Wesley off work until further notice. On July 23, 2018, Ms. Wesley underwent further surgery on both of her arms and hands. On July 31, 2018, the orthopedic surgeon continued Ms. Wesley off work until further notice.

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.

Iowa Admin. Code r. 871-24.23(1) 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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

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

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The evidence in the record establishes that from the time Ms. Wesley established the original claim for unemployment insurance benefits that was effective June 17, 2018 through the present, Ms. Wesley has been unable to work due to illness and/or injury, has been under the care of a doctor who had kept her off work, and had not been available for work. For these reasons, Ms. Wesley is not eligible for benefits, effective June 17, 2018, and continues to be ineligible for benefits. In addition, Ms. Wesley made no weekly claim for the week that ended June 23, 2018 and has made no weekly claims for the period following July 21, 2018. The absence of weekly claims also causes Ms. Wesley not to meet the availability requirement.

Because the evidence establishes that there has been a separation from the employment, this matter will be remanded to the Benefits Bureau for adjudication of the claimant's eligibility and the employer liability for benefits based on the separation.

DECISION:

The July 18, 2018, reference 01, decision is affirmed. The claimant has been unable to work due to illness and/or injury and unavailable for work since she established the original claim that was effective June 17, 2018. Ms. Wesley continues under the care of a doctor and continues to be unable to work and unavailable for work. Benefits are denied effective June 17, 2018 and the claimant's ineligibility, based on the able and available requirements, continues to the present.

This matter is remanded to the Benefits Bureau for adjudication of the employment separation and its impact on the claimant's eligibility and the employer liability for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs