

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALISA M MITCHELL**  
Claimant

**APPEAL NO. 11A-UI-04280-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/20/11**  
**Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Alisa Mitchell filed a timely appeal from the March 30, 2011, reference 01, decision that denied benefits effective February 20, 2011, based on an Agency conclusion that she was not able to perform work. After due notice was issued, a hearing was held on April 27, 2011. Ms. Mitchell participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**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: Alisa Mitchell is employed by Tyson Fresh Meats. Ms. Mitchell started the employment in 2008 and continues in the employment at this time. From February 18, 2011, through April 12, 2011, Ms. Mitchell was off work due to non-work-related health issues. Ms. Mitchell was initially off work due to a cyst on her spine. Ms. Mitchell saw a physician on February 18 and March 18, 2010 for that condition. The doctor imposed a ten-pound lifting restriction. Ms. Mitchell was unable to perform her regular duties with the restriction and the employer did not have work for Ms. Mitchell that would meet the restriction. Ms. Mitchell continued on an approved leave of absence. Ms. Mitchell then underwent surgery on her breast on March 31, 2011. Ms. Mitchell was released to return to work without restrictions effective April 12, 2011 and returned to work at Tyson Fresh Meats on April 13, 2011. Ms. Mitchell continues in the employment at this time.

**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".

The weight of the evidence in the record establishes that Ms. Mitchell was on approved leave of absence for non-work-related medical conditions from April 18, 2011 until April 13, 2011, when she returned to the employment. A person on a leave of absence is not eligible for unemployment insurance benefits. See 871 IAC 24.23(10). Ms. Mitchell continued under the care of one or more physicians and had medical restrictions that prevented her from working until April 12, 2011. For these reasons as well, Ms. Mitchell would not be eligible for unemployment insurance benefits. See 871 IAC 24.23(1) and (35). Effective April 13, 2011, Ms. Mitchell returned to her employment. Because she was again working at that point, she would not be eligible for unemployment insurance benefits. See 871 IAC 24.23(23).

Ms. Mitchell did not meet the work ability requirements of Iowa Code section 96.4(3) during the period of February 20, 2011 through April 12, 2011. Ms. Mitchell has not met the work availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits. Benefits are denied effective February 20, 2011. The disqualification continues as of April 27, 2011, the date of the appeal hearing.

**DECISION:**

The Agency representative's March 30, 2011, reference 01, is modified as follows. The claimant was not able to perform work February 20, 2011 through April 12, 2011. The claimant has not met the work availability requirement since February 20, 2011. Benefits are denied effective February 20, 2011. The disqualification continues as of April 27, 2011, the date of the appeal hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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