

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ESTHER G WUOLLEH**

Claimant

**APPEAL NO. 13A-UI-02345-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 02/18/13**

**Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Tyson, filed an appeal from a decision dated February 18, 2013, reference 01. The decision allowed benefits to the claimant, Esther Wuolleh. After due notice was issued, a hearing was held by telephone conference call on March 26, 2013. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Benefits Coordinator Dзамal Grcic.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Esther Wuolleh was employed by Tyson beginning March 5, 2007 as a full-time production worker. Her last day of work was August 30, 2012, and she had been on a leave of absence for a medical problem through the date of the hearing. The employer maintains it was not a work-related injury and Ms. Wuolleh has not provided any doctor's statement releasing her to return to work in any capacity.

Esther Wuolleh has received unemployment benefits since filing a claim with an effective date of January 6, 2013.

**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 employer's evidence indicates the claimant has been off on a medical leave of absence, not caused by a work-related injury. Although the information was very sparse with many gaps in the witness's information, the claimant did not participate at all to refute any of the evidence. The administrative law judge must therefore conclude the claimant is off on a medical leave of absence and is not able and available for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of February 18, 2013, reference 01, is reversed. Esther Wuolleh is not able and available for work and is ineligible for unemployment benefits. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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