

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LATDA SOURAVONG
3 VICKI CIR
OTTUMWA IA 52501

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-12490-AT
OC: 09-05-04 R: 03
Claimant: Appellant (3R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Latda Souravong filed a timely appeal from an unemployment insurance decision dated November 12, 2004, reference 09, which denied benefits to her for the week ending October 30, 2004 upon a finding that she was unable to work. After due notice was issued, a telephone hearing was held December 15, 2004 with Ms. Souravong participating. Mitchell Souravong served as interpreter. This matter is considered on a consolidated record with 04A-UI-12488-AT, 04A-UI-12489-AT and 04A-UI-12491-AT.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Latda Souravong is a packing house worker who has suffered a back injury. The company doctor has recommended that Ms. Souravong not work for 18 months.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Souravong is eligible for unemployment insurance benefits. She is not.

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".

An individual must be medically able to work in order to receive unemployment insurance benefits. The evidence in this record establishes that Ms. Souravong has been injured and has not been released to return to work. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated November 12, 2004, reference 09, is modified. Benefits are withheld effective October 24, 2004 until such time as the claimant establishes that she is medically able to work. The matter of her eligibility for benefits from September 5, 2004 through October 23, 2004 is remanded to the Unemployment Insurance Services Division.

tjc/b