

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ZULMA HERNANDEZ
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-19120-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/13/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On August 28, 2021, Zulma Hernandez (claimant/appellant) filed an appeal from the August 23, 2021, reference 01, unemployment insurance decision that denied benefits based upon not being able to and available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on October 20, 2021. The claimant participated. The employer did not participate. No exhibits were admitted into the record. Official notice was taken of the agency records.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending June 13, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant has worked as a full-time production worker for the employer, Tyson Fresh Meats, since June 10, 2001. Her rate of pay was \$17.05 in June 2021.

On March 11, 2021, the claimant had to leave work early because she was not feeling well. Later that day, the claimant was diagnosed with cancer after a trip to the emergency room. The claimant subsequently requested and was granted a leave of absence. The claimant's physician has not released the claimant to return to work in any capacity. The claimant's physician has told the claimant that she will likely not be released to return to work until January 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective June 13, 2021.

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:

Benefit 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 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.

(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.

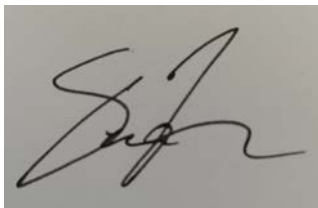
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant wrote on her appeal letter that she is not voluntarily unemployed. The administrative law judge notes that the language in the administrative rule regarding leaves of absences is poorly worded for situations such as hers when she is being compelled to take leave due to serious medical circumstances. He is also sympathetic to the circumstances she is facing. However, the claimant is not eligible for the period in question because she was ill, on a leave or absence and subject to doctor's restrictions as outlined above under Iowa Admin. Code r. 871-24.23 (1), (10), and (35). Benefits are denied.

DECISION:

The August 23, 2021, reference 01, unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective June 13, 2021. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

October 28, 2021
Decision Dated and Mailed

smn/scn