

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKEITHIA M ROWSER
Claimant

APPEAL NO. 13A-UI-10402-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/28/13
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated September 3, 2013, reference 01, that held she was unable to perform work due to injury on July 28, 2013, and benefits are denied. A hearing was held on October 7, 2013. The claimant participated. The employer did not participate.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on August 20, 2012, and last worked for the employer as full-time production on July 28, 2013. Claimant suffered what she believes was a work-related injury in February 2013 to her right arm. She was diagnosed with tendonitis and the doctor restricted her from using her right arm. It was considered a worker's compensation injury.

The employer provided claimant with restricted duty jobs that she worked up to July 28. On July 29 the doctor changed his diagnosis from tendonitis to a vitamin D deficiency, a non-work-related injury. The employer denied claimant further work because she restricted from using her right arm due to a non-job-related injury. Claimant did not understand because she had performed production work using a wizzer knife as part of restricted duty.

Claimant went to a specialist doctor of her choice who diagnosed claimant with tendonitis after an MRI and he treated her with cortisone shots. While he restricted her from right arm use, it was not any different from what the first doctor had imposed. The employer was informed of the second doctor treatment, but it put claimant on medical leave until she fully recovered.

The employer failed to respond to the hearing notice with the name and phone number to be called for the hearing, and a check of the department (APLT) record confirmed no call in.

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".

871 IAC 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.

The administrative law judge concludes claimant does meet the availability requirements of the law effective July 28, 2013, as she is able to perform work for the employer.

While there is a claimant/employer dispute about whether there is a worker's compensation injury, the record establishes claimant is ready willing and able to work for the employer on the same basis now as she did up to July 28. The employer chose to ignore the second doctor diagnosis that confirms the original first doctor diagnosis claimant has tendonitis. Although claimant is restricted from right arm use she has proven she can do full-time jobs for the employer given the restriction.

It is the employer that put claimant on medical leave as it was not requested or agreed to by claimant. Claimant agrees she still considers herself an employee waiting to return when her restriction is lifted.

DECISION:

The decision of the representative dated September 3, 2013, reference 01, is reversed. The claimant meets the availability requirements of law and is eligible for benefits effective July 28, 2013.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css