

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PARISH T ROSS

Claimant

APPEAL NO. 11A-UI-02788-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PINERIDGE FARMS LLC
FORESURE TRANSPORT**

Employer

OC: 11/21/11

Claimant: Appellant (4R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 25, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2011. Claimant participated. Isaac Oyivo was a witness for the claimant. Employer participated by John Anderson, Human Resources Manager, and Christo Hinojos, Safety Director. This case was heard in conjunction with 11A-UI-02787-VST. Official notice is taken of agency records.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork processing plant located in Des Moines, Iowa. The claimant was hired on August 7, 2008, as a full-time employee in the cutting department. His job was to box and weigh trim. His last day of actual work was June 3, 2010.

Sometime in mid May 2010, the claimant reported stomach pain. The employer arranged for an appointment with a physician for evaluation and a worker's compensation claim was filed on the claimant's behalf by the employer. The claimant was diagnosed with an inguinal hernia and surgery was scheduled for June 4, 2010. The claimant was permitted to work light duty until the surgery. He was given a job of scooping trim. This job required lifting of less than five pounds. The claimant had no difficulty performing this job.

The claimant was off work for an extended period of time. On November 12, 2010, the claimant's physician wrote a work release that allowed the claimant to return to work full duty on November 22, 2010. The claimant did not contact the employer. On November 30, 2010, a certified letter was sent to the claimant asking him about his intentions to return to work. The employer informed the claimant that he was still a full-time employee and that work was

available for him. The claimant finally agreed to a meeting with the employer on December 28, 2010.

On December 28, 2010, the claimant met with the employer. The employer offered the claimant the light-duty job he had previously worked prior to his surgery. It was a job scooping trim and the lifting was less than five pounds. The claimant agreed to return to work. He asked, however, that his return to work be delayed because he wanted to go to Missouri to spend New Year's Day with his family. The claimant and the employer agreed that he would return to work on January 4, 2011, at 7:00 a.m.

The claimant did not return to work on January 4, 2011. He called the employer at 5:34 a.m. and said that he would not be in to work because his stomach was bothering him. The claimant never contacted the employer again. The employer made repeated efforts to contact the claimant but the employer could not reach him. The employer waited until January 14, 2011, and the claimant still did not contact the employer. The employer sent the claimant a certified letter on January 14, 2011, which could not be delivered to the claimant and returned to the employer. The claimant's employment ended on January 14, 2011.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 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.

The representative determined that the claimant was disqualified because he was not able and available for work. The evidence in this case established that the claimant had been released to return to work full duty on November 22, 2010, and that the claimant refused to return to work despite this release. The claimant only contacted the employer after he received a certified letter on December 2, 2010, and did not agree to meet with the employer until December 28, 2010. He then asked his employer to delay his return to work until January 4, 2011, so that he could visit relatives in Missouri. When on January 4, 2011, the claimant again refused to return to work, claiming he had "stomach pain." The claimant provided no evidence to show that he should be off work.

The administrative law judge concludes that this case concerns primarily whether the claimant refused an offer of suitable work. The administrative law judge notes that the claimant was paid unemployment insurance benefits for the week ending November 27, 2010, through the week ending February 19, 2011. At that time a disqualification was imposed for the claimant not being able and available for work.

In 11A-UI-02787-VST, the administrative law judge disqualified the claimant from receiving benefits as of January 14, 2011, for being a voluntary quit. The issue remaining is whether there should be a disqualification back to the week ending November 27, 2010, to January 14, 2011, for refusal of suitable work. That issue is remanded back to the Claims Section for determination as the agency had not had an opportunity to consider that matter.

DECISION:

The decision of the representative dated February 25, 2011, reference 02, is modified in favor of the appellant. The claimant was able and available for work. This matter is remanded for consideration of whether the claimant refused an offer of suitable work.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css