

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IRMA TREVINO
Claimant

APPEAL NO: 11A-UI-05107-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03-21-10
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 16, 2011. The claimant participated in the hearing with Attorney Adnan Mahmutagic. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time production worker for Tyson Fresh Meats February 25, 2008. She was injured at work on four separate occasions resulting in permanent restrictions being imposed with regard to her wrists and shoulders in January 2011. The employer found light-duty work for the claimant some weeks but now she is required to bid weekly for jobs approved by her physician. The last day the claimant worked for the employer was February 25, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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) and (35) provide:

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.

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

Inasmuch as the injury is considered work related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions, the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated April 6, 2011, reference 01, is reversed. The claimant is able to work and available for work effective the week ending March 5, 2011. Benefits are allowed, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css