

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCIS M MORNDOLOPAYE
Claimant

APPEAL NO. 15A-UI-13526-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/08/15
Claimant: Appellant (2)

Section 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated November 30, 2015 (reference 02) which denied unemployment insurance benefits as of November 8, 2015; finding that the claimant was not able to perform work at that time. After due notice was provided, a telephone hearing was held on December 30, 2015. The claimant participated. Participating on behalf of the claimant was Mr. Luke Guthrie, Attorney at Law. Although duly notified, the employer did not participate. Official interpreter was Language Line interpreter Kepelle.

ISSUE:

The issue is whether the claimant meets the able to work requirements of the Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was previously employed by Tyson Fresh Meats from March 23, 2008 until October 23, 2015; when his employment ended. While employed, the claimant suffered an injury to his right hand and arm; which required a surgery and the claimant was unable to work for a period of time. Before opening his claim for unemployment insurance benefits with an effective date of November 8, 2015, Mr. Morndolopaye was released by his physician to return to general work without restrictions. The claimant is actively and earnestly seeking work each week that he claims unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Morndolopaye is able to work effective November 8, 2015. It does.

Iowa Code § 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 otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the claimant is able to work, is available for work, and is actively and earnestly seeking work. Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the requirements. 871 IAC 24.22.

To satisfy the ableness requirement, an individual must be physically and mentally able to work in some gainful employment; not necessarily in the individual's customary occupation but in employment that is engaged in by others as a means of livelihood. 871 IAC 24.22(1). With regard to illness or injury, each case is decided upon an individual basis recognizing that various work opportunities present different physical requirements. 871 IAC 24.22(1)(a). A statement from a medical practitioner is considered to be prima facie evidence of the physical ability of the individual to perform the work required. The statement is legally sufficient to establish the claimant's physical ability unless it is proved by other evidence. 871 IAC 24.22(1)(a).

Upon application of the facts to the appropriate law, the administrative law judge concludes that the claimant has been able and available for work since opening his claim for benefits with an effective date of November 8, 2015. The claimant is eligible to receive unemployment insurance benefits, providing that he has met all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated November 30, 2015 (reference 02) is reversed. The claimant is able to perform work that meets the able and available requirements of the law. Benefits are allowed as of November 8, 2015, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

can/can