

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

U MYINT
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 18A-UI-02256-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 14, 2018, (reference 01) unemployment insurance decision that denied benefits based upon his availability for work. The parties were properly notified about the hearing. A telephone hearing was held on March 15, 2018. Claimant participated personally and through Interpreter 5169 with CTS Language Link. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant able to work and available for work effective January 28, 2018?
Is claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has a knee injury. He is attempting to file a workers' compensation claim, but had not done so yet at the time of the hearing. January 20, 2018, was claimant's last day of work. Around that time, claimant presented employer with restrictions issued by his doctor. The doctor recommended claimant work one hour and rest one hour. Employer stated it could not accommodate those restrictions and recommended claimant take a leave of absence. Claimant applied for short-term disability benefits and was approved. Claimant is scheduled to have surgery on his knee on March 20, 2018. Employer informed claimant he is allowed to return to work after he is released without restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective January 28, 2018.

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. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work with or without restriction, he has not established his ability to work while still an employee of Swift Pork Company effective January 28, 2018. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since he has not been released to perform his full work duties, he is not considered able to or available for work for purposes of employment security law.

DECISION:

The February 14, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective January 28, 2018. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers his services to the employer, and no suitable, comparable work is available or if he is involuntarily separated before that time.

Christine A. Louis
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Decision Dated and Mailed

cal/scn