

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOUA ELLIS
Claimant

APPEAL NO: 11A-UI-12714-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 08-21-11
Claimant: Appellant (2-R)**

871 IAC 24.23(10) – Leave of Absence
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 23, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 20, 2011. The claimant participated in the hearing with Attorney Martin Ozga. 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. Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue is whether the claimant is on a leave of absence.

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 October 26, 2008. She sustained a work-related injury and was not able to work without restrictions effective March 16, 2011. The claimant is restricted to lifting, pushing, or pulling no more than five pounds and cannot use a knife but is able to perform light-duty work. The employer had the claimant complete a leave of absence application but did not explain it to her (Claimant's Exhibit B). The claimant is unsure of whether she is still employed with Tyson but has been checking the Tyson job postings weekly to see if there is a job there she would be able to do. The employer has not offered the claimant any light duty work to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is off work due to a work-related injury and 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".

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, the claimant has established her ability to work, even with restrictions. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

The issue of whether the claimant has been separated from her employment with Tyson has not yet been adjudicated by the Claims Section. The claimant's potential separation from employment with the employer is remanded to the Claims Section for an initial determination and adjudication.

DECISION:

The representative's decision dated September 23, 2011, reference 02, is reversed. The claimant is able to work and available for work effective March 16, 2011. Benefits are allowed, provided the claimant is otherwise eligible. The issue of the claimant's potential separation from employment with the employer is remanded to the Claims Section for an initial determination and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw