

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SILVIA E ANAYA

Claimant

APPEAL NO. 09A-UI-06189-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

**Original Claim: 03/01/09
Claimant: Respondent (5)**

Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 8, 2009, reference 02, decision that allowed benefits effective March 1, 2009. After due notice was issued, a hearing was started on May 18, 2009 and completed on June 9, 2009. Claimant Silvia Anaya participated. Tony Luse, Employment Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Ms. Anaya.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant has been employed under the same wages and hours as existed before she filed the claim for benefits that was effective March 1, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Silvia Anaya commenced her full-time employment with Swift & Company on June 23, 2008 and continues as a full-time production work. Ms. Anaya is assigned to the second shift. Ms. Anaya starts work at 1:45 p.m. and gets done at about 11:00 p.m. Ms. Anaya generally worked Monday through Friday. Ms. Anaya's immediate supervisor is Carl Jansen. On February 26, 2009, Ms. Anaya left work early due to illness and with Mr. Jansen's approval. On Friday, February 27, 2009, Ms. Anaya was absent due to illness. On Monday, March 2, Ms. Anaya was again absent due to illness.

On Tuesday, March 3, Ms. Anaya appeared for work at her regular start time. When Ms. Anaya arrived, Human Resources Coordinator Rosario Alvarez notified Ms. Anaya that she was discharged for exceeding her allowable attendance points. Ms. Anaya spoke with a union representative, who told her to go home and wait for news regarding whether the employer would allow her to continue in the employment. At 9:00 a.m. on Wednesday, March 4, 2009, the union representative left the first of three messages that the employer would indeed allow Ms. Anaya to continue in the employment and that she should report for work. Ms. Anaya was not home and did not review the messages until Thursday, March 5. On Thursday, March 5, the union representative left one or more additional messages indicating that Ms. Anaya should report for work. Ms. Anaya reported at the beginning of her shift on March 5. Ms. Anaya has continued in the employment every since.

On March 4, 2009, Ms. Anaya established a claim for benefits that was deemed effective March 1, 2009. Ms. Anaya received \$300.00 in benefits for the week of March 1 through 7, 2009. Ms. Anaya did not report any wages for the week of March 1 through 7.

REASONING AND CONCLUSIONS OF LAW:

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 24.22(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.

871 IAC 24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an

individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Administrative code rule 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off.

The evidence indicates that Ms. Anaya was not able and available for work on Monday, March 2, due to illness. On Tuesday, March 3, Ms. Anaya was able and available for work, but the employer would not allow her to work. This amounted to a one-day lay-off. On Wednesday morning, March 4, the employer notified Ms. Anaya, through the union representative, that she could return to work that day at her usual start time. But, Ms. Anaya was not available to work on March 4. Ms. Anaya reported for work on March 5 and 6. Because Ms. Anaya was available for work during the majority of the week, three out of five working days, the administrative law judge concludes that Ms. Anaya met the work availability requirement of Iowa Code section 96.4(3) during the week that ended March 7, 2009. Ms. Anaya was eligible for benefits for the week that ended March 7, 2009. Thereafter, Ms. Anaya was no longer eligible for benefits, because she had returned to work full-time.

DECISION:

The Agency representative's April 8, 2009, reference 02, decision is modified as follows. The claimant met the work availability requirements of Iowa Code section 96.4(3) during the week that ended March 7, 2009 and was eligible for benefits for that one week, provided she was otherwise eligible. The claimant was ineligible for benefits effective March 8 because she had returned to full-time work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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