

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARILYN M YEANAY
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 20A-UI-03305-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/29/19
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Marilyn Yeanay filed a timely appeal from the April 10, 2020, reference 08, decision denied benefits effective December 29, 2019, based on the deputy's conclusion that Ms. Yeanay was unable to work and therefore did not meet the availability requirement. After due notice was issued, a hearing was held on May 27, 2020. Ms. Yeanay participated personally and was represented by attorney Timothy Luce. Mr. Luce presented testimony through Ms. Yeanay and through Lawrence Yeanay. The employer did not provide a telephone number for the hearing and did not participate. Liberian-English interpreter Charles Cooper of International Translation Services assisted with the hearing. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, and the administrative law judge decision in Appeal Number 20A-UI-01599-JC-T. The administrative law judge left the hearing record until the close of business on May 28, 2020 for the limited purpose of allowing Ms. Yeanay the opportunity to submit medical documentation concerning her ability to perform work since she established her claim for benefits for the limited purpose of allowing Ms. Yeanay the opportunity to submit proof of her work search activities since she established her claim for benefits. On May 27, 2020, the administrative law judge received a December 17, 2019 medical note and an April 15, 2020 medical note, which notes the administrative law judge received into evidence as Exhibits A and B respectively. On May 28, 2020, the administrative law judge received a packet of work search materials that the administrative law judge received into the record as Exhibit C.

ISSUES:

Whether the claimant has been able to work and available for work since establishing the original claim for benefits that was effective December 29, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marilyn Yeanay is from Liberia. Ms. Yeanay attended school in Liberia up to the seventh grade. Ms. Yeanay did not continue her studies in the United States. Ms. Yeanay struggles with spoken American English and cannot read American English. Ms. Yeanay relies heavily for

assistance on her husband, Lawrence Yeanay. Ms. Yeanay prefers to defer to Mr. Yeanay about matters pertaining to her health status and her unemployment insurance claim. Ms. Yeanay has historically worked in the hog processing industry.

Ms. Yeanay established her claim for unemployment insurance benefits in response to being discharged by Tyson Fresh Meats, Inc. from her full-time hog production employment at Tyson. At the time of the discharge, Ms. Yeanay was several months pregnant. Prior to the discharge, Ms. Yeanay's doctor had restricted her to "light-duty" that involved lifting no more than 15 pounds. The medical restrictions were due to stomach and back pain that Ms. Yeanay was experiencing in connection with her pregnancy. Ms. Yeanay's doctor did not specify what was meant by "light-duty." Ms. Yeanay's doctor recommended that Ms. Yeanay use a "prenatal cradle," a brace to support her abdomen. The employer declined to adhere to accommodate the "light-duty" work restrictions.

Ms. Yeanay continued under the same restrictions until the birth of her child on March 25, 2020. Following the birth of her child by caesarian section, Ms. Yeanay remained in the hospital for three days. Ms. Yeanay's doctor kept her off work until May 1, 2020. On April 15, 2020, Ms. Yeanay's doctor provided her with a medical note that stated she was released to return to work without restrictions effective May 1, 2020.

With the assistance of Mr. Yeanay, Ms. Yeanay established an original claim for unemployment insurance benefits that was effective December 29, 2019. Iowa Workforce Development set Ms. Yeanay's weekly benefit amount at \$423.00. Ms. Yeanay received \$4,111.80 in benefits for 10 consecutive weeks between December 29, 2019 and March 7, 2020. Ms. Yeanay reached her maximum benefit amount for regular state benefits with the benefit week that ended March 7, 2020. As of May 27, 2020, Ms. Yeanay had, with the assistance of Mr. Yeanay, made consecutive weekly claims for the entire period of December 29, 2020 through May 23, 2020. Several of these weekly claims were made retroactively under the pandemic-related relaxed reporting requirements. For each week of the claim, Ms. Yeanay has reported that she made two job contacts. Ms. Yeanay actually made no job contacts on her own and relied entirely upon Mr. Yeanay to apply for jobs over the Internet on her behalf. Ms. Yeanay reported that she had made two job contacts even during those weeks when she was incapacitated following the March 25, 2020 caesarian birth of her child. For the weeks between December 29, 2020 and April 4, 2020, Ms. Yeanay reported that she was able to work and available for work. For the week that ended April 11, 2020, Ms. Yeanay made two weekly claims. In one of the weekly claims for the week that ended April 11, 2020, Ms. Yeanay said she was able to work and available for work. In the second weekly claim for that same week, Ms. Yeanay reported that she was not able to work and/or not available for work. For the weeks that ended April 18, April 25, and May 2, 2020, Ms. Yeanay reported that she was not able to work and/or not available for work. For the week that ended May 9, May 16, and May 23, 2020, Ms. Yeanay reported that she was able to work and available for work.

Ms. Yeanay has not kept the required work search log since she filed her claim for benefits. In the work search materials Ms. Yeanay submitted, there is no indication of a work search between December 29, 20219 and the benefit week that ended February 22,2020.

During the week of February 23-29, 2020, Mr. Yeanay engaged in correspondence with Monster.com on February 23-24, 2020, but not in reference to a particular job. Rather, the contact with Monster.com was about how to access and use the company's website. Ms. Yeanay provided a February 24, 2020 email response from an international "law-related management" firm for unspecified work. Ms. Yeanay provided a February 24, 2020 email response from a dubious enterprise not affiliated with Walmart, but offering Walmart careers

“beginning at \$22.25 an Hour in Your area.” Ms. Yeanay provided a February 27, 2020 email response from a dubious enterprise referencing jobs at Goodwill “beginning at \$18.25/HOUR in Your Area.”

During the week of March 1, 2020, Mr. Yeanay engaged in correspondence on Ms. Yeanay’s behalf with a couple websites a reasonable person would conclude were likely scamming enterprises. Ms. Yeanay provided a March 1, 2020, email response from a dubious enterprise announcing “your resume has been chosen for the job openings listed on the attached website.” There is no indication of what the purported prospective jobs were. Ms. Yeanay provided a dubious March 3, 2020 email response from an unnamed employer for the dubious position of “Fulfillment Manager...to help persons sell products on the international Amazon marketplace.”

During the week of March 8-14, 2020, Mr. Yeanay applied to one bona fide prospective employer on behalf of Ms. Yeanay. Ms. Yeanay provided a March 11, 2020 email response from Waterloo employer Kimco Services rejecting her application for a part-time evening janitor position.

During the week of March 15-21, 2020, Mr. Yeanay contacted three Iowa employers on behalf of Ms. Yeanay. Ms. Yeanay provided a March 16, 2020 email response from NPC International [Pizza Hut] confirming receipt of her application for a Team Member position at the employer’s Ansborough Avenue location in Waterloo. Ms. Yeanay provided a March 21, 2020 email response from the University of Iowa confirming receipt of her application for a Laundry Production Worker position. It is unclear why Ms. Yeanay, who resides in Waterloo, would be applying for a job more than an hour’s drive away in the Iowa City/Coralville area. Ms. Yeanay provided a March 21, 2020 email response from Premier Staffing acknowledging her application for work with the temporary employment agency.

During the week of March 22-28, 2020, Mr. Yeanay’s only apparent contact with a prospective on behalf of Ms. Yeanay was receipt of a March 27, 2020 email response from the University of Iowa indicating the employer had elected to delay its search for the Laundry Production Worker. This was the same week in which Ms. Yeanay gave birth on Wednesday, March 25, by caesarian section and was thereafter hospitalized for the remainder of the week.

During the week of March 29, 2020 through April 4, 2020, Iowa Workforce Development temporarily suspended the work search requirement in light of the Covid-19 pandemic. Mr. Yeanay’s only apparent contact with a prospective on behalf of Ms. Yeanay that week was a March 31, 2020 incomplete application to Olive Garden. Ms. Yeanay provided a March 31, 2020 email response to her incomplete application for a position at Olive Garden. The response directed her to complete a required online assessment.

Mr. Yeanay has made additional sporadic contact with prospective employers on behalf of Ms. Yeanay during the period that Iowa Workforce Development has continued to suspend the work search requirement. Some of these additional contacts occurred at times when Ms. Yeanay was under a doctor’s care and not released to work. Others occurred after she had been released to return to work without restrictions. Ms. Yeanay provided an April 11, 2020 email response from a third-party vendor that acknowledged her April 11 application for a Member Support position at Walmart. Ms. Yeanay provided an April 16, 2020 email response directly from Walmart that indicated that employer was hiring and that Ms. Yeanay’s application on file with Walmart had expired. Ms. Yeanay provided a May 1, 2020 email response from smartrecruiters.com that acknowledged her application for the position of “Relocation Host” for an unnamed employer. Ms. Yeanay provided a May 16, 2020 email response from PetSmart that acknowledged her application for work with that company.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(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 Admin. Code r. 871-24.23(1) provides:

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.
- (2)

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.

The weight of the evidence in the record establishes that Ms. Yeanay was able to work from the time she established the claim for benefits that was effective December 29, 2019 through the benefit week that ended March 21, 2020. Throughout that time, Ms. Yeanay was separated from the employment with Tyson, but had been released by her doctor to perform light-duty work that did not involve lifting more than 15 pounds. A reasonable person would conclude that work meeting such restrictions would be available in the Waterloo-Cedar Falls area.

The weight of the evidence establishes that Ms. Yeanay was not able to work during the week that started March 22, 2020, the week during which she gave birth by caesarian section. Ms. Yeanay continued to be under a doctor's care and unable to work through April 30, 2020.

Pursuant to the April 15, 2020 medical note, Ms. Yeanay was once again able to work as of May 1, 2020.

Ms. Yeanay was not available for work within the meaning of the law during the eight weeks between December 29, 2019 and February 22, 2020. The weight of the evidence establishes that Ms. Yeanay did not engage in any search for new employment during the period of December 29, 2019 through February 22, 2020, despite the false weekly claim reports she and/or her husband had made to Iowa Workforce Development indicating that she had made two job contacts per week. Ms. Yeanay is not eligible for benefits for the eight weeks between December 29, 2019 and February 22, 2020.

Ms. Yeanay made two good faith job contacts through her husband during the week of February 23-29, 2020 and was available for work within the meaning of the law. A reasonable person would not fault Ms. Yeanay for making contact with ostensible prospective employers who turn out to be scam/sham enterprises. The entities purporting to represent Walmart and Goodwill were highly likely sham enterprises luring "applicants" with absurdly inflated wages for menial labor positions. The application for an international law-related management was not made in good faith. Ms. Yeanay is eligible for benefits for the week that ended February 29, 2020, provided she meets all other eligibility requirements.

The weight of the evidence establishes that Ms. Yeanay did not make an active and earnest search for work during the benefit week of March 1-7, 2020 and therefore was not available for work within the meaning of the law that week. Once again, Mr. Yeanay appears to have applied for job on behalf of Ms. Yeanay that were with like sham/scam entities. However, the first application was not for any particular job. The second application that week was for an international "Fulfillment Manager," work for which Ms. Yeanay and Mr. Yeanay knew Ms. Yeanay was not qualified. Ms. Yeanay is not eligible for benefits for the week that ended March 7, 2020.

The weight of the evidence establishes that Ms. Yeanay did not make an active and earnest search for work during the benefits week of March 8-14, 2020 and therefore was not available for work within the meaning of the law that week. Mr. Yeanay applied to only one bona fide prospective employer on behalf of Ms. Yeanay that week. Ms. Yeanay is not eligible for benefits for the week that ended March 14, 2020.

The weight of the evidence establishes that Ms. Yeanay made an active and earnest search for new employment during the week of March 15-21, 2020 by making contact with two Waterloo area employers for work within her ability. The application to the University of Iowa more an hour away was not made in good faith. Ms. Yeanay is eligible for benefits for the week that ended March 21, 2020, provided she meets all other eligibility requirements.

During the week of March 22-28, 2020, Ms. Yeanay was not available for work within the meaning of the law and was not eligible for benefits. During this week, Ms. Yeanay gave birth by caesarian section and was hospitalized for three days. Ms. Yeanay made no employer job contacts that week. Ms. Yeanay is not eligible for benefits for the week that ended March 28, 2020.

Ms. Yeanay was not available for work within the meaning of the law during the five weeks between March 29, 2020 and May 2, 2020. During all but the last two days of that period, Ms. Yeanay was recovering from giving birth by caesarian section, was under the care of a physician, and had not been released to work. Ms. Yeanay is not eligible for benefits during the five weeks between March 29, 2020 and May 2, 2020.

Ms. Yeanay had met the availability requirement since the benefit week that started May 3, 2020 and is eligible for benefits for the period beginning May 3, 2020, provided she is otherwise eligible. Since that date, Ms. Yeanay has been released to work without restrictions. Since that date, Iowa Workforce Development has suspended the work search requirement. Ms. Yeanay is eligibility for benefits effective May 1, 2020, provided she meets all other eligibility requirements. Ms. Yeanay will want to monitor Iowa Workforce Development announcements for an announcement that the work search requirement is no longer suspended.

DECISION:

The April 10, 2020, reference 08, decision is modified in favor of the claimant as follows.

The claimant was able to work, but not available for work during the period of December 29, 2019 through February 22, 2020 and is not eligible for benefits for that period.

The claimant was able to work and available for work during the week that ended February 29, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements.

The claimant was able to work, but not available for work during the weeks that ended March 7 and March 14, 2020 and is not eligible for benefits for those two weeks.

The claimant was able to work and available for work during the week that ended March 21, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements.

The claimant was not able to work and not available for work during the period of March 22, 2020 through the benefit week that ended May 2, 2020 and is not eligible for benefits for that period.

Effective May 3, 2020, the claimant was able to work and met the availability requirement in light of Workforce Development's temporary suspension of the work search requirement. The claimant is eligible for benefits for the period beginning May 3, 2020, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision for any benefits the claimant has received for weeks during which she did not meet the eligibility requirements.

This matter is remanded to the Investigations & Recovery Unit for further action it deems appropriate.



James E. Timberland
Administrative Law Judge

June 12, 2020
Decision Dated and Mailed

jet/mh