

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHALLOM M KATA**

Claimant

**APPEAL NO. 11A-UI-02531-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 01/02/11**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work/Leave of Absence

**STATEMENT OF THE CASE:**

Shallom Kata filed a timely appeal from the representative's decision dated February 22, 2011, reference 01, which denied benefits effective November 15, 2010 finding that the claimant was not available for work. After due notice, a telephone hearing was held on April 14, 2011. The claimant participated personally. The employer participated by Mr. Aureliano Diaz, Acting Human Resource Manager. The official interpreter was Ms. Agata Sisto.

**ISSUE:**

At issue in this matter is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Shallom Kata began employment with the Swift Pork Company on May 26, 2009. Mr. Kata worked as a full-time production worker until November 15, 2010 when he was no longer able to work due to a serious medical condition. Because the claimant had provided medical documentation verifying his need to be absent the employer agreed to keeping to Mr. Kata on the company's employment roles for a one-year period. The claimant is eligible to return to work at the Swift Pork Company upon being released by his physician provided that the one-year agreed period of time has not elapsed.

Due to his serious medical condition Mr. Kata has been determined as unable to work until after he obtains surgery that is scheduled for April 22, 2011 and recuperates. It is the claimant's intention to return to the Swift Pork Company upon recuperating and being released by his physician.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes that the claimant is not able to work and not 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".

871 IAC 24.22(2)j(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The evidence in the record establishes that Mr. Kata is not able to work and not available for work effective November 15, 2010 because of a serious medical condition which prohibits him engaging in employment. Because of the medical necessity that Mr. Kata be off work, the claimant and the Swift Pork Company concluded that Mr. Kata would be allowed to return to work when medically released provided that he was able to return within a one-year period. The evidence in the record establishes that Mr. Kata considers himself to be still attached to the

Swift Pork Company and plans to return to that employment upon recuperating and being released by his physician.

The evidence in the record further establishes that Mr. Kata has been unable to engage in gainful employment since November 15, 2010 because of his serious medical condition.

Because the Employment Security Law requires individuals who claim unemployment insurance benefits to be able and available to accept immediate work, the administrative law judge concludes that the claimant has not met the able and available requirement of the law. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated February 22, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits effective November 15, 2010 as he is not able and available for work. Benefits are withheld until such time as the claimant makes himself available for work to the extent that was available during his base period history of employment.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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