

BEFORE THE
 EMPLOYMENT APPEAL BOARD
 Lucas State Office Building
 Fourth floor
 Des Moines, Iowa 50319

GLORIA MENDOZA	:	
	:	
Claimant,	:	HEARING NUMBER: 07B-UI-07370
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
TYSON FRESH MEATS INC	:	
	:	
Employer.	:	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

 Elizabeth L. Seiser

 Mary Ann Spicer

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The record establishes that the claimant suffered a work-related injury for which she was released to work with permanent restrictions. (Tr. 8, lines 9-17) The employer had light duty job available, but chose not to offer such work to the claimant since she had been released to return to full duty. (Tr. 40, lines 31-32) The claimant has bid and attempted to a work a job as a membrane skinner after her release. However, she was not physically able to perform this job. Other job offers involved significant repetitive motion, which was not within her permanent restrictions. Because the claimant has permanent restrictions as a result of a work-related injury, and is able to work light duty, the claimant need not be fully recovered in order to be eligible for unemployment should no work be available within her restrictions. The employer is obligated to 'reasonably accommodate' the claimant in accordance with 871 IAC 24.26(6)"b". Since the record establishes that there is no such work available, the claimant should be allowed benefits provided she is otherwise eligible.

John A. Peno

AMG/fnv

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

Elizabeth L. Seiser

Mary Ann Spicer

John A. Peno

AMG/fnv