

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERMA M WILLIAMS
Claimant

APPEAL NO. 06A-UI-10912-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 09-24-06 R: 03
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 30, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 29, 2006. The claimant did participate and was represented by Philip Miller, Attorney at Law. The employer did participate through Katie Diercks, Assistant Human Resources Manager.

ISSUES:

Is the claimant on a leave of absence at her request?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a lead person full time beginning December 30, 1997 through September 22, 2006 when she was placed on a layoff by the employer.

The claimant was injured in a work-related accident on June 15, 2004 when the claimant's hand was caught in machine and two fingers were amputated. As a result of the accident the claimant has permanent work restrictions that prohibit her from being around heavy machinery on the production floor. Beginning in September 2006 the employer chose to no longer accommodate the claimant's work restriction. The employer was unwilling to keep the claimant in a light duty position. The claimant has interviewed for two jobs in the plant, neither of which were awarded to her. She is currently able to work in an office setting and is actively seeking work, including other jobs within the plant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work and that she is not on a voluntary leave of absence.

Iowa Code § 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 24.23(1), (35) 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.

(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.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work with permanent work restriction the claimant has established her ability to work. The claimant has been working in the frock cage since shortly after her injury. The employer is no longer willing to accommodate the claimant's work restrictions and to provide her with work that complies with her restrictions against work on the production floor around heavy machinery. The claimant did not ask for a leave of absence; she was involuntarily placed on one by her employer because the employer will no longer accommodate her work restrictions. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated October 30, 2006, reference 01, is affirmed. The claimant is able to work and available for work effective September 22, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs