

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TITI NSIMBA**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 20A-UI-10728-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/20**  
**Claimant: Appellant (2R)**

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Iowa Code section 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

On September 3, 2020, Titi Nsimba (claimant/appellant) filed an appeal from the August 31, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was not available for work.

A telephone hearing was held on October 20, 2020. The parties were properly notified of the hearing. The claimant participated personally and with the assistance of a French language interpreter. Tyson Fresh Meats Inc (employer/respondent) did not register a number for the hearing and did not participate.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was June 15, 2015. Claimant was employed as a full-time packer. The last day claimant worked on the job was May 24, 2020. Claimant was not available to continue working at that time due to a lack of childcare because of the pandemic. She had to stay home and watch her four children until they could return to school.

Claimant called her employer each day during this time to report that she could not work due to the lack of childcare. She informed the employer that she would come to work when school began. Claimant was available and called in on August 31, 2020 to return to work. However, at that time she was informed that her ID was no longer in the system. Claimant took this to mean that she had been terminated. Claimant has had no further communication with the employer after that time.

Claimant has been available for work since August 31, 2020. She has not worked anywhere else since then.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the August 31, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was not available for work is REVERSED. Claimant is not available for work from the benefit week ending May 30, 2020 and continuing through the benefit week ending August 29, 2020 and is therefore ineligible for benefits during that period. However, she is available for work and eligible for benefits from the benefit week ending September 5, 2020, provided she meets all other eligibility requirements.

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".

Claimant is not available from the benefit week ending May 30, 2020 and continuing through the benefit week ending August 29, 2020. Claimant was not available for work during that time due to a lack of childcare because of the pandemic. Because claimant was not available for work during that time, she is not eligible for benefits during that time. However, she was available for work from the benefit week ending September 5, 2020 and continuing to present, and is therefore eligible for benefits from that time so long as she meets all other eligibility requirements.

**While this decision denies regular, state benefits in part, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.**

**DECISION:**

The August 31, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was not available for work is REVERSED. Claimant is not available for work from the benefit week ending May 30, 2020 and continuing through the benefit week ending August 29, 2020 and is therefore ineligible for benefits during that period. However, she is available for work and eligible for benefits from the benefit week ending September 5, 2020, provided she meets all other eligibility requirements.

**REMAND:**

The issue of separation from employment is remanded to the Benefits Bureau for an initial investigation and decision with right of appeal.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

October 23, 2020  
Decision Dated and Mailed

abd/sam

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.