

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANA CEHIC**  
Claimant

**APPEAL NO: 06A-UI-09171-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 07/30/06 R: 03**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 11, 2006, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on September 27, 2006. Claimant participated personally. Employer participated by Jerome Rinken, General Supervisor.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant went off work on Family Medical Leave April 3, 2006 due to a non-work injury. Claimant was given a light duty work release July 14, 2006. Claimant has not been release to work restrictions that would allow her to perform her job as a production worker. Claimant is off work on FMLA until January 24, 2007.

**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".

871 IAC 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.

871 IAC 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 physician and has not been released as being able to work.

Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work full duty, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work. Benefits shall be withheld effective July 30, 2006.

**DECISION:**

The decision of the representative dated September 11, 2006, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective July 30, 2006, provided claimant meets all other eligibility requirements.

---

Marlon Mormann  
Administrative Law Judge

---

Decision Dated and Mailed

mdm/kjw