

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY R WILLIAMS**  
Claimant

**APPEAL NO. 10A-UI-14258-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 09/12/10**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Rodney Williams filed a timely appeal from the October 15, 2010, reference 05, decision that denied benefits for the period of September 12, 2010 to October 9, 2010 based on an Agency conclusion that Mr. Williams did not meet the work ability requirements of the law. After due notice was issued, a hearing was held on December 1, 2010. Mr. Williams did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Elena Reader, Human Resources Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-14257-JTT.

**ISSUE:**

Whether Mr. Williams was able to work and available for work during the period of September 12, 2010 through October 9, 2010.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Rodney Williams was employed by Tyson Fresh Meats, Inc., as a full-time general maintenance mechanic. Mr. Williams started the employment in March 2009 and last performed work some time before July 6, 2010. On July 6, Mr. Williams commenced calling in absences due to illness. Mr. Williams called in such absences on July 6, 7, 11, 12, 13, 17, 20, 21 and 26 and August 2. Then Mr. Williams ceased making contact with the employer. Mr. Williams was absent without notifying the employer on August 3, 4, 8, and 9. The employer then did hear further from Mr. Williams until August 20, 2010, when he belatedly delivered an application for leave. By that time, the employer had already documented his separation from the employment as a result of the no-call, no-show absences.

## 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, (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.

(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.

(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.

Mr. Williams failed to appear for the hearing and thereby failed to present any evidence toward meeting his burden of providing that he was both able to work and available for work during the period September 12, 2010 to October 9, 2010. The administrative law judge concludes that the claimant failed to meet the work ability and availability requirements the law during the period September 12, 2010 to October 9, 2010 and is not eligible for unemployment insurance benefits for that period.

**DECISION:**

The Agency representatives October 15, 2010, reference 05, decision is affirmed. The claimant has failed to demonstrate that he is able to work and available for work during the period September 12, 2010 to October 9, 2010. Benefits are denied for that period.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs