

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON D HUTCHINSON
Claimant

APPEAL NO. 11A-UI-09655-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/05/11
Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant, Aaron Hutchinson, appealed an unemployment insurance decision dated July 19, 2011, reference 02, that concluded Hutchinson was not able to work. A telephone hearing was held on August 23, 2011. The parties were properly notified about the hearing. Hutchinson participated in the hearing. Jim Hook participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

ISSUE:

Was Hutchinson able to and available for work?

FINDINGS OF FACT:

Aaron Hutchinson worked full time for the employer as a production worker in the ham chop job from June 2, 2008, to March 20, 2011. The ham chop job involves strenuous work of handling a frozen carcass and separating the ham from the loin, with pulling of 50 pounds.

In May 2010, Hutchinson sustained a work-related injury when a hog fell on his head and injured his head, neck, shoulder, and back. He received treatment for this injury, including physical therapy for his back. He continued to work in a light-duty job until he was released to work without restrictions by the workers' compensation doctor in November 2010.

After being released to work without restrictions, Hutchinson returned to his regular job but continued to have problems with back pain. On about March 21, Hutchinson's back condition had worsened to the extent that he could not get out of bed. He called in to notify the employer that he was not able to work and went to his personal doctor because company nurses told him that his workers' compensation case was closed.

Hutchinson's doctor diagnosed his conditions as spondylolysis of the lumbar spine. The doctor excused him from working. Hutchinson provided the medical excuse and requested and was granted a medical leave of absence. The original medical leave was from March 21 to July 7, 2011.

Sometime in June 2011, Hutchinson's doctor released him to work with restrictions of lifting no more than 15 pounds and limited bending, twisting, and reaching and occasional sit, stand, and walk as needed. These restrictions would prevent Hutchinson from performing his regular job. When he brought in the release with restrictions, the company nurses told Hutchinson that he could not return to work until all his restrictions were lifted. Hutchinson continued to be on a medical leave of absence based on his medical statement that was not able to return to his regular job.

Hutchinson submitted another medical statement on July 20, 2011. His doctor released him to return to work with restrictions of lifting no more than 20 pounds and limited bending, twisting, and reaching and occasional sit, stand, and walk as needed. These restrictions would prevent Hutchinson from performing his regular job. When he brought in the release with restrictions, the company nurses told him that he could not return to work until all his restrictions were lifted. Hutchinson continued to be on a medical leave of absence based on his medical statement that was not able to return to his regular job.

Hutchinson submitted another medical statement on August 3, 2011. His doctor released him to return to work with restrictions of lifting no more than 40 pounds and sit, stand, and walk as needed. These restrictions would prevent Hutchinson from performing his regular job. When he brought in the release with restrictions, he was told that he could not return to work until all his restrictions were lifted. Hutchinson continued to be on a medical leave of absence based on his medical statement that was not able to return to his regular job.

As of the date of the hearing, Hutchinson's restrictions had not changed from the August 3 medical statement. Hutchinson had not quit his employment and the employer has not discharged him. He continues to be on a medical leave of absence due to not being able to perform his regular job.

Although Hutchinson asserts that his current medical condition is related to his employment and the injury suffered in May 2010, there is no medical evidence in the record to support that contention. Hutchinson has not sought workers' compensation benefits based on his current condition. He has not been looking for another job as he is waiting until the employer allows him to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Hutchinson is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

- (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.
- (2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
- (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence establishes that Hutchinson requested and was granted a medical leave of absence. That leave has been extended since that time. Hutchinson has accepted the leaves of absence and has not been actively looking for other jobs and is waiting to return to work for the employer. Although Hutchinson asserts that he offered to return to work, the return to work included major restrictions that would limit Hutchinson to a tailor-made job. As of June 2011, when Hutchinson applied for benefits, he could only lift 15 pounds and was able to do limited bending, twisting, and reaching and occasional sit, stand, and walk as needed, which are the normal job duties for nearly every job that does not involve sedentary work. The restrictions in July 2011 only slightly changed. Although the restrictions have lessened since then, the restrictions are still a substantial limitation on his ability to work.

Hutchinson is not able to, available for, and actively seeking work as required by the unemployment insurance law. If circumstances have changed since the time of the hearing and Hutchinson believes the disqualification should be removed, he must contact his local Workforce Development Center to request that the disqualification be lifted.

DECISION:

The unemployment insurance decision dated July 19, 2011, reference 02, is affirmed. Hutchinson is ineligible for benefits effective June 5, 2011. If circumstances have changed since the time of the hearing and Hutchinson believes the disqualification should be removed, he must contact his local Workforce Development Center to request that the disqualification be lifted.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css