

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YEBALEWORK A MENGESHA
Claimant

APPEAL NO: 09A-UI-19338-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/15/09
Claimant: Appellant (2)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's December 17, 2009 decision (reference 01) that held the claimant ineligible to receive benefits as of June 2, 2009, because she was ill and unable to work for the employer. A telephone hearing was held on February 5, 2009. The claimant participated in the hearing with her witness, Freddie Starling. The employer did not respond to the hearing notice or participate in the hearing. Daniel Gheresus interpreted the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work as of June 2, 2009?

FINDINGS OF FACT:

The claimant started working for the employer on February 2, 2008. Her last day of work for the employer was November 14, 2008. Her hand started hurting in late September. The employer's physician gave her work restrictions. On November 18, 2008, the claimant was restricted to light-duty work. The employer informed the claimant there was no light-day work for her and laid her off from work. The claimant established a claim for unemployment insurance benefits during the week of November 16, 2008.

The employer told the claimant she could check every Monday to see if the employer had a job that would fit her work restrictions and she could bid for that position. The claimant did not find any work with the employer with her work restrictions. The claimant, however, worked for a temporary employment firm the first quarter of 2009.

On June 2, 2009, the employer's doctor released the claimant to work without any restrictions. The claimant did not return to work for the employer.

Since June 2, 2009, the claimant went back to school to become a nursing assistant or home health aide. The claimant is looking for work in these occupations and is capable of performing this type of work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The evidence establishes that as of June 2, 2009, the claimant was released by the employer's doctor to work without any restrictions. The fact the claimant did not return to work for the employer in early June, does not mean she is not able to and available for work. Instead, the facts establish that as of June 2, the claimant was able to and available for work. The claimant has taken reasonable steps to become employed by taking classes to work as a nursing assistant or a home health aide. The claimant established she is able to and available for work and is looking for work in which she has the skills to do. As of November 15, 2009, the claimant is eligible to receive benefits.

The facts do not establish the claimant was ill as of June 2, 2009. Instead, the employer's doctor released her to work without any restrictions. Therefore, as of June 2, 2009, a preponderance of the evidence establishes she was able to and available for work.

Since the claimant's employment separation with the employer occurred in mid-November 2008, and the employer had an opportunity to protest charges to its account based on the claimant's earlier November 16, 2008 claim year, this decision does not address a November 14, 2008 employment separation.

DECISION:

The representative's December 17, 2009 decision (reference 01) is reversed. The claimant was released to work without any restriction as of June 2, 2009. Since June 2, she established she is able to and available for work. Therefore, the claimant is not denied benefits as of June 2, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs