

UNEMPLOYMENT INSURANCE APPEALS

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

LINDA J PARHAM
Claimant

APPEAL NO. 13A-UI-07672-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON PREPARED FOODS INC
Employer

OC: 05/05/13
Claimant: Appellant (2)

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated June 1, 2013, reference 01, that concluded claimant was not able and available for work. A hearing was scheduled and held on August 2, 2013 pursuant to due notice. Claimant did not participate. Employer participated by Elena Reader, Human Resource Manager. Exhibit A was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant went on medical leave May 29, through June 6, 2013. Claimant was able and available for work at all other times.

Claimant did not receive a copy of the decision. Claimant appealed immediately after receiving notice from a workforce office that she had lost her case.

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.

Benefits are withheld May 29, 2013 through June 6, 2013. Benefits shall be allowed effective May 5, 2013 through May 28, 2013 and again June 7, 2013. Claimant was only unavailable for a short time due to medical reasons.

Claimant's appeal is timely as it was filed immediately upon actual notice of an adverse decision.

DECISION:

The decision of the representative dated June 11, 2013, reference 01, is reversed. Benefits are withheld May 29, 2013 through June 6, 2013. Benefits shall be allowed effective May 5, 2013 through May 28, 2013 and again June 7, 2013 and forward.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs