

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELINA A HERNANDEZ**  
Claimant

**APPEAL NO. 09A-UI-11243-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS**  
Employer

**OC: 05/17/09**  
**Claimant: Respondent (4-R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

West Liberty Foods (employer) appealed a representative's July 27, 2009 decision (reference 01) that concluded Angelina Hernandez (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 21 2009. The claimant participated personally through Olga Esparza, Interpreter. The employer participated by Nikki Bruno, Human Resources Generalist, and Anne Hocke, Human Resources Information Specialist Administrator.

**ISSUE:**

The issue is whether the claimant was able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 30, 2003, as a full-time laborer. The claimant signed for receipt of the employer's handbook on January 11, 2005. The claimant provided a doctor's note to the employer indicating she was not to work from April 16 through May 18, 2009, because of migraines. The claimant told the employer that the migraines might be work related. The employer did not report the matter to its workers' compensation carrier or send the claimant to a physician.

The employer told the claimant she could not return to work until she had a Functional Capacity Examination (FCE). The employer did not schedule the exam until May 28, 2009. The Human Resources and Safety Departments reviewed the nurse's findings. The FCE, in a letter dated June 20, 2009, stated the claimant had permanent lifting restrictions. The employer told the claimant she could return to work on June 19, 2009. The employer did not pay the claimant any wages during this period. The employer issued the claimant a written warning on June 19, 2009, for being absent nine times for properly reported illnesses.

The claimant properly reported her absence due to illness on June 20, 2009. On June 22, 2009, the claimant appeared for work ill. The employer issued the claimant a written warning for

her absence on June 20, 2009. After receiving the written warning, the claimant told the employer she could not work. On June 23 and 24, 2009, the claimant properly reported her absence due to illness. The claimant was hospitalized. The employer terminated the claimant on or about June 25, 2009.

The claimant reports that she recently underwent surgery and is unable to work at this time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was sometimes able and available for work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant advised by her physician not to work from April 16 through May 18, 2009. She is considered to be unavailable for work from April 16 through May 18, 2009.

The claimant was released to return to work with restrictions by her physician on May 19, 2009. She is considered to be able and available for work because her physician stated she was able and available for work. The FCO indicated she was able to work with restrictions during this period. The claimant is not disqualified from receiving unemployment insurance benefits from May 19 through June 22, 2009. The claimant is disqualified from receiving unemployment insurance benefits on June 23 and 24, due to her unavailability for work while hospitalized. She was released from the hospital without restriction and again was able and available for work.

The issue of the claimant's more recent surgery and her ability to work is remanded for determination.

**DECISION:**

The representative's July 27, 2009 decision (reference 01) is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits from April 16 through May 18, and June 23 and 24, 2009, because she was not able to work for the employer.

The issue of the claimant's more recent surgery and her ability to work is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css