

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CYNTHIA M MOSTEK  
1314½ W 3<sup>RD</sup> ST  
WATERLOO IA 50701

TYSON FRESH MEATS INC  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 04A-UI-10253-DWT  
OC: 12/21/03 R: 03  
Claimant: Appellant (4/R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Cynthia M. Mostek (claimant) appealed a representative's September 15, 2004 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits as of August 16, 2004 because she requested and Tyson Fresh Meats, Inc. (employer) gave her a leave of absence. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2004. The claimant participated in the hearing with Julie Schlomer, a friend, who testified on the claimant's behalf. Dave Duncan, the human resource manager for the Waterloo facility, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of August 15, 2004, is the claimant able to and available for work?

#### FINDINGS OF FACT:

The claimant started working for the employer on June 22, 2004. The claimant's job required her to stand in one place while she pushed loins into a box during her eight-hour shift. The claimant had not done this type of work before.

On August 10, 2004, the claimant went to the employer's nurse because her knee hurt. Before the claimant went to the nurse, she tried to stretch out her leg in an attempt to alleviate the pain she was experiencing. The employer's nurse sent the claimant to the employer's doctor who indicated the problem with the claimant's knee was not a work-related injury. The doctor opined that the claimant might have pulled a muscle when she stretched. The claimant sought urgent care later on August 10 because her knee was so swollen. The urgent care doctor gave the claimant a work restriction of light-duty work. The claimant filed a claim for workers compensation.

The employer initially accommodated the claimant's light-duty restrictions. When her workers' compensation claim was denied, the claimant had a work restriction that she needed to rest every two hours for 10 to 15 minutes. After the employer learned the claimant's work restriction was not the result of a work-related injury, the employer would not accommodate her work restrictions. On August 16, the employer indicated the claimant would be placed on a medical leave of absence until she had recovered from her non-work related injury and could perform her work without any work restrictions. The claimant's leave of absence started August 16, 2004.

On September 9, the claimant's doctor released her to return to work without any restrictions. The claimant did not contact the employer about going back to work because the claimant did not want any more problems with her knee. Instead, the claimant looked for another job. She started another job in early October, but this job was a computer job where she was not required to stand in one place all day.

#### REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits; she must be able to and available for work. Iowa Code §96.4-3. Even though the claimant did not request a medical leave of absence when she had work restrictions, the employer did not have any work for her to do with her work restrictions. The claimant signed the leave of absence form the employer presented to her on August 16 so she could return to work when her doctor released her to return to work without any restrictions. As of August 16, the claimant had work restrictions, which prevented her from doing the job for which she was hired. While the claimant may not have wanted to go on a medical leave, she signed the medical leave request to preserve her job while she had work restrictions. When a claimant is on a leave of absence, she is not eligible to receive unemployment insurance benefits because she is considered voluntarily unemployed. 871 IAC 24.25(10). As of August 15, the claimant is not eligible to receive unemployment insurance benefits because she was on a leave of absence, but primarily because she had work restrictions, which prevented her for working anything but a tailor-made job.

On September 9, the claimant was released to return to work without any medical restrictions. The claimant did not return to work or even contact the employer after September 9. Instead, she looked for another job, which she obtained in early October 2004. When the claimant did not contact the employer after September 9 there is an employment separation issue, which

has not yet been addressed. Therefore, the issue of why the claimant did not return to work as of September 9 or if there is an employment separation is remanded to the Claims Section to investigate and make a written determination.

DECISION:

The representative's September 15, 2004 decision (reference 04) is modified in the claimant's favor. Based on the claimant's work restrictions, she is not able to and available for work from August 16 through September 9, 2004. The Claims Section must investigate an issue of why the claimant did not return to work as of September 9. Therefore, the issue of why the claimant did not return to work for the employer or whether there has been an employment separation is remanded to the Claims Section.

dlw/kjf