

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**NURKY ARRIAGA DIAZ**  
Claimant

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**APPEAL NO. 14A-UI-13449-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/22/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 26, 2014 reference 04, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 23, 2014. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Interpretative services were provided for the court's benefit by Rafael Geromino on January 23, 2015 and by Anna Pottebaum on February 13, 2015.

**ISSUE:**

The issue in this matter is whether claimant is 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: As claimant was the only participant in the hearing, all findings of fact are gleaned from claimant's testimony.

Claimant injured her shoulder outside of work. At no times was claimant given any work restrictions. Claimant did not miss any days or hours of work as a result of her injury. Claimant did not have any restrictions as to her ability to perform work. Claimant has maintained an active job search.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(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.

Inasmuch as the injury was not work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective June 22, 2014.

**DECISION:**

The decision of the representative dated December 26, 2014, reference 04, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective June 22, 2014, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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