

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OSCAR A BRIOSO**  
Claimant

**APPEAL NO. 13A-UI-10263-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08/04/13**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 6, 2013, reference 01, that concluded he was not able to and available for work. Telephone hearings were held on October 3 and 7, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha, and a witness, Isabella Benitez. Eloisa Baumgartner participated in the hearing on behalf of the employer with a witness, Shane Auxier.

**ISSUE:**

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked for the employer as a production on May 18, 1993, to July 28, 2013. The claimant had been released to work by the work-compensation doctor without restrictions after a work-related hernia condition. He and the employer were advised that if he had any problems with leg pain, they were not work-related and he would need to see his personal doctor about them.

The claimant was taken off work by his personal doctor from July 29 to August 2. That leave was extended to August 5. On August 13, the claimant's doctor took the claimant off work until September 13.

The claimant reported to work on September 13 and requested light-duty work. He had no doctor's statement that required him to have light-duty but the claimant believed he could not return to his old job. The employer informed the claimant that he would need to work in his regular job or go home. The claimant chose to go home. The claimant has returned to work a few times since September 13 and has requested light-duty work. The employer has offered him full-time work in his regular job since he has no doctor's statement limiting him to light-duty work.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

871 IAC 24.22(2)c 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.

The employer has full-time suitable work for the claimant that he does not have good cause to refuse. He has no doctor's statement saying he is restricted to light-duty work. He is not able to and available for work.

**DECISION:**

The unemployment insurance decision dated September 6, 2013, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits. He will remain ineligible until he shows he is able to and available for work.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs