

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
JORGE H VARGAS Claimant	APPEAL NO: 12A-UI-09198-S2T
TYSON FRESH MEATS INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 06/24/12 Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jorge Vargas (claimant) appealed a representative's July 25, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work with Tyson Fresh Meats (employer). The claimant was represented by Jamie Byrne, Attorney at Law, and participated personally through interpreter, Ninfa Redmond. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the 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 that: The claimant worked for the employer from December 26, 2006, to April 5, 2012. The claimant was injured at work on March 27, 2012. The claimant's physician restricted him from working on April 6, 2012. On May 30, 2012, the claimant's physician said he could return to work with restrictions. He has not been released to return to work without restrictions. The claimant filed for unemployment insurance benefits with an effective date of June 24, 2012.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able 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, he is considered to be unavailable for work. The claimant was released to return to work with restrictions by his physician. He is considered to be able and available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's July 25, 2012 decision (reference 01) is reversed. The claimant is not disqualified from receiving unemployment insurance benefits because he is able and available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs