

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK MUKURALUINDA
Claimant

APPEAL NO. 12A-UI-01412-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 12/18/11
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 17, 2012, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on March 1, 2012. Claimant participated personally. Employer responded to the hearing notice and did not participate as the representative was not available. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work. The issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 19, 2011.

Claimant was incarcerated from January 10, 2012 through February 6, 2012. Claimant filed his appeal the day after he was released from jail. Claimant did not receive the decision because he was incarcerated at the time it was delivered.

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".

871 IAC 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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as claimant was incarcerated for a month he is not eligible for benefits during that time. Benefits are withheld effective January 10, 2012 through February 6, 2012. Benefits shall be allowed effective February 7, 2012.

DECISION:

The decision of the representative dated January 17, 2012, reference 02, is modified. Claimant is not eligible to receive unemployment insurance benefits, effective January 10, 2012 through February 6, 2012. Claimant is eligible for benefits effective December 18, 2011 and February 7, 2012, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs

