

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANA A DEMPSEY**  
Claimant

**APPEAL NO: 18A-UI-05151-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 04/01/18**  
**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 30, 2018, reference 02, decision that determined he was not able and available for work effective April 1, 2018. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 23, 2018. The claimant participated in the hearing. The employer provided a telephone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant injured his feet and was unable to work until April 27, 2018, at which time his treating physician released him to return to work without restriction.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective April 29, 2018.

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".

The claimant was not able and available to work through the week ending April 28, 2018. He was released to return to work without restrictions April 27, 2018. Accordingly, benefits are allowed effective April 29, 2018.

**DECISION:**

The April 30, 2018, reference 02, decision is modified in favor of the claimant. The claimant is able to work and available for work effective April 29, 2018. Benefits are allowed beginning the week ending May 5, 2018.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn