

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH M WATSON
Claimant

APPEAL NO. 12A-UI-11776-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/19/12
Claimant: Respondent (1)

Iowa Code § 96.5-1-d – Medical Separation

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 20, 2012, reference 02, that concluded the claimant was qualified for benefit because he had offered to return work following an injury but no work was available. A telephone hearing was held on October 29, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Will Sager participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant offer to return work following an injury but no work was available?

FINDINGS OF FACT:

The claimant worked full time for the employer as a maintenance mechanic from September 20, 2010, to August 19, 2012. The claimant had been off work due to back condition aggravated by his work on a leave of absence through August 3, 2012. After he returned to work, he met with a company nurse and human resources director who expressed concern about him reinjuring if he returned to work.

The claimant aggravated the injury to his back at work on August 19. He notified a supervisor about the injury. He was absent for work with a doctor's excuse on August 19 to August 22. On August 23, he was released to return to work without restrictions by his doctor. The claimant contacted the company nurse because he understood she would have to clear him to return to work. He explained about the reinjury and release to return to work. He asked the nurse whether he would be allowed to return to work. The nurse again expressed concerns about the employer being found liable if he reinjured himself again. She asked the claimant if he would do so if he were the employer in terms of letting him come back after he was hurt. The claimant told her that he understood. The claimant understood that the employer was not allowing him to return to work and filed for unemployment benefits.

The claimant continued to call in absent after speaking to the nurse because he was considering filing a grievance, but stopped after about a week when he decided not to pursue it.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about his conversation with the nurse after he was released to return to work. I believe the nurse informed the claimant that he would not be allowed to return due to concerns about reinjury.

The claimant has met all the conditions for receiving benefits under Iowa Code § 96.5-1-d.

DECISION:

The unemployment insurance decision dated September 20, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css