

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A POWELL
Claimant

APPEAL NO: 14A-UI-12663-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/16/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Deborah A. Powell (claimant) appealed a representative's December 5, 2014 (reference 03) decision that concluded she was not qualified to receive unemployment insurance benefits by not being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 7, 2015. This appeal was consolidated for hearing with related Appeal No. 14A-UI-12892-DT. The claimant participated in the hearing. Kristi Fox appeared on the behalf of Tyson Fresh Meats, Inc. (employer). Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant last worked for the employer on November 6, 2014. She then went on a leave of absence for medical reasons as of November 7; to return November 14. She then called in an absence on November 14. She was then hospitalized on November 17 and November 18. She was then released from the hospital and as of November 19 would have been physically able to work. The claimant established an unemployment insurance benefit year effective November 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran*

Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). A claimant who is ill or hospitalized is not considered able and available for work. Rule 871 IAC 24.23(1),(2). Being able and available is based upon the claimant's status for the major portion of the regular work week. Rule 871 IAC 24.22(2)h.

The claimant has demonstrated that for the major portion of the week, beginning November 16, 2014, she has been able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's December 5, 2014 (reference 03) decision is reversed. The claimant is able to work and available for work effective November 16, 2014. The claimant would be qualified to receive unemployment insurance benefits, if she was otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can