

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GUADALUPE JUAREZ ALVIS**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 18A-UI-06546-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/29/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 18, 2018 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was not able to perform work. The parties were properly notified of the hearing. A telephone hearing was held on July 2, 2018. The claimant, Guadalupe Juarez Alvis, participated personally. CTS Language Link provided Spanish language interpretation services to claimant. The employer, Swift Pork Company, did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Is the claimant able to work and available for work effective April 29, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time for this employer from January 28, 2015 until April 26, 2018. Claimant's job duties required her to lift heavy crates and packaging. In July of August of 2016, claimant injured her wrist at work and she filed a worker's compensation claim regarding carpal tunnel syndrome in her right wrist. She was placed on light duty work pulling material out of the product. Her doctor put her on a ten-pound lifting restriction. She then injured her left shoulder while she was overcompensating for the right wrist injury. She did not file a worker's compensation claim regarding her shoulder injury. A doctor told her she needed to have surgery on the shoulder; however, claimant did not have surgery.

Claimant's physician never changed her restrictions from the ten-pound lifting restriction and she stopped seeing that doctor when she was no longer employed at this employer. Claimant believes that she is fully recovered and could perform work; however, has not visited with any doctor about whether or not she can return to work with or without restriction and never had shoulder surgery to correct her injury. Claimant's only other employment prior to working for this employer was as a nanny caring for children.

Claimant stopped filing any weekly continued claims once she received the unemployment insurance benefits decision dated May 18, 2018 (reference 02) that denied benefits based upon

her inability to work. Claimant has not filed any weekly continued claims since the week-ending May 19, 2018.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective April 29, 2018. Benefits are denied.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

To be 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); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant has not been released from her doctor's care. Claimant's testimony that she is fully recovered is not credible given the fact that she did not have surgery as directed by her doctor and provided no documentation from her treating doctor that she is recovered. Further, there are no jobs in claimant's work history that she would be able to perform without lifting more than ten pounds. Benefits are denied.

**DECISION:**

The May 18, 2018 (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work effective April 29, 2018. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given her education, training, work experience, and any medical restrictions, provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs