

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLORIA MENDOZA**  
Claimant

**APPEAL NO. 07A-UI-07370-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 07/08/07 R: 01**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Gloria Mendoza (claimant) appealed an unemployment insurance decision dated July 30, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she requested a leave of absence with Tyson Fresh Meats, Inc. (employer) and was not available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2007. The claimant participated in the hearing with Attorney Mary Hamilton and Nancy Anguianno. Claimant's Exhibit A was admitted into evidence. 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:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time production worker November 2, 2004. She was taken off work due to a work injury from September 15, 2006 through October 8, 2006. Her physician released her to return to full-work duty with permanent restrictions on March 14, 2007 and she was also at maximum medical improvement on that date. The claimant's work restrictions are as follows: She can frequently grip, pinch, reach, bend, squat, crawl, and twist up to seven pounds; she can occasionally kneel, climb and twist up to 15 pounds; she can occasionally lift up to 35 lbs from knee to waist; and can occasionally lift up to 20 lbs from the floor. Her supervisor worked closely with human resources and health services to find an available job for her that met those restrictions. The employer found four jobs that fit within her restrictions and the claimant tried several of them but continued to complain of pain and said she could not perform the jobs. Two of the jobs were pick lean and trim jowls.

Finally, on July 9, 2007, the employer placed the claimant on a leave of absence to preserve her employment since she stated she could not perform any of the jobs. When employees are

absent beyond four days, they can be placed on a leave of absence so their absences will not count against them with regard to their attendance record. The claimant was advised she needed to bid on any available jobs that met her restrictions. The claimant can no longer be placed on any light-duty jobs since her physician released her to return to full duty and she cannot displace any other team member in order to get a job. She won a bid job of membrane skinner and it was awarded on July 20, 2007. The claimant signed for the job which was within her restrictions per health services. The claimant tried it but said she could not do it so she was placed on another leave of absence which she signed on July 27, 2007. She won two more bids on August 3, 2007 and the employer had an interpreter go out on the floor with her to see which job she wanted. The jobs involved packing feet and tails and grading ribs. The claimant told the employer she would choose a job on the following day but later told the employer she did not want to do either job. The employer had not taken her off of her leave of absence so it continued and she was encouraged to bid on more jobs. The claimant is currently on a leave of absence.

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

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a).

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor

market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). While she is physically able to work, she has limited her availability to work. The employer has provided the claimant with seven different jobs that meet within her restrictions and she has refused all of them, some of them without even attempting to perform the job duties. The claimant is not qualified to receive unemployment insurance benefits because she is not available to work.

**DECISION:**

The unemployment insurance decision dated July 30, 2007, reference 01, is affirmed. The claimant is not entitled to unemployment insurance benefits because she does not meet the availability requirements of the law.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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