

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RUTH MBILI**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 18R-UI-03468-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/24/17**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Able to and Available for work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 18, 2018 (reference 02) unemployment insurance decision that disallowed benefits based upon claimant not being able to perform work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on April 10, 2018. The claimant participated personally. Language interpretation services were provided to claimant by CTS Language Link. Robert Ingoli participated as a witness on behalf of the claimant. The employer participated through witness Katherine Schoepske. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUE:**

Is claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker from February 23, 2015 until August 29, 2017, when she was discharged. See Exhibit B. Her last day physically worked on the job was July 7, 2017. On July 8, 2017, claimant became ill with sickle cell anemia. Claimant was hospitalized from July 8, 2017 until sometime in the middle of August 2017. However, when claimant was released from the hospital, she was not released back to work.

Claimant was placed on a leave of absence due to medical issues from July 11, 2017 until August 17, 2017. Claimant was not released by her doctor to return to work until January 22, 2018. Claimant was released to return to work effective January 22, 2018, without restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was able to work effective the benefit week beginning January 21, 2018. Benefits are allowed effective January 21, 2018, provided claimant is otherwise eligible.

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".

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)).

Because the treating doctor has released the claimant to return to work without restrictions, she has established her ability to work effective for the benefit week beginning January 21, 2018. As such, benefits are denied from December 24, 2017 to January 20, 2018 due to claimant not being released from her doctor and being able to work. Benefits are allowed effective January 21, 2018, so long as claimant is otherwise eligible.

**DECISION:**

The January 18, 2018 (reference 02) unemployment insurance decision is modified in favor of the appellant. Benefits are denied from December 24, 2017 through January 20, 2018. Benefits are allowed effective January 21, 2018, provided claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs