

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IGNACIA A RIVERA
Claimant

APPEAL NO. 06A-UI-11009-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

**OC: 10/01/06 R: 04
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Ignacia A. Rivera (claimant) appealed a representative's November 7, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits as of October 1, 2006, because she was partially unemployed and was still working for Kraft Pizza Company (employer) in the same capacity as she had been hired. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer in August 1993. Prior to August 13, 2006, the claimant had two knee surgeries. During the last year, the claimant started experiencing problems with her feet. The claimant went on a leave of absence as of August 13, 2006.

In mid-September, the claimant's physician released her to return to work without any restrictions. The employer's doctor, however, restricted her from lifting more than 40 pounds, restricted her from pushing or pulling and restricted her from climbing stairs. The claimant's job required her to lift more than 40 pounds. The employer's doctor put the claimant on a medical layoff for two years. Based on the claimant's medical history, the employer's doctor indicated the restrictions were in the claimant's best medical interest and were in the employer's best interest.

The claimant established a claim for unemployment insurance benefits during the week of October 1, 2006. The claimant's physician has not placed any work restrictions on the claimant. The claimant is looking for full-time factory work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. If a leave of absence is negotiated with the consent of both parties, a claimant is voluntarily unemployed and is not eligible to receive benefits during a leave of absence. 871 IAC 24.22(2)(j). The facts establish the claimant did not consent to a leave of absence. The claimant tried to return to work after her doctor released her to return to work without any work restrictions. The employer's doctor imposed work restrictions on the claimant and would not allow her to work. The employer's doctor placed the claimant on a two-year medical layoff.

The claimant is looking for full-time factory work. The claimant is able to and available for work.

Under the facts of this case, the claimant is eligible to receive benefits as of October 1, 2006. The claimant established she is able to and available for work.

DECISION:

The representative's November 7, 2006 decision (reference 01) is reversed. The employer placed the claimant on a two-year medical layoff even though the claimant's physician released her to return to work without any work restrictions in mid-September 2006. The claimant established that she is able to and available for work. As of October 1, 2006, the claimant is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css