

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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TYSON FRESH MEATS INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08274-H2T  
OC: 04-11-04 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 27, 2004, reference 02, decision that found the claimant not able to and available for work. After due notice was issued, a hearing was held on August 26, 2004. The claimant did participate through the interpretation of Rosemary Paramo Ricoy. The employer did participate through Christy Travis, Employment Manager. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment benefits with an effective date of April 11, 2004. The claimant was employed as a boner on the production line full time beginning October 21, 2003

through January 19, 2004, when he stopped working due to physical problems he was having. The claimant is still an employee although he has not physically worked for the employer for some months. The claimant continued to receive paychecks through March 2, 2004 but he did not work that time period. Instead, the claimant refused the light-duty work he was offered by signing a declination of light-duty work and used up accrued leave time. The claimant was taken off work by his physician beginning first on March 2, 2004 through April 2, 2004. The claimant has presented a note to the employer indicating that he was to be off work until August 9, 2004. The claimant's most recent doctor's note indicates that he is unable to work from May 3, 2004 forward to some date as yet unknown. The claimant has sought and obtained medical treatment and at the time of the hearing was continuing to receive medical treatment. The claimant last saw Dr. Congdon, an orthopedic specialist, who has determined that the claimant has not been able to work at his occupation from May 3, 2004 through some as yet unknown date. The claimant does not now believe he is able to work now because the doctor has taken him off work. The claimant is not now working anywhere.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

Iowa Code Section 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(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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the claimant is not able to work due to both his own opinion, his physician's opinion and because the treating physician has not released the claimant to return to work, the claimant has not established ability to work. The claimant has not been able to work since early March 2004, but his claim for benefits was not filed until April 11, 2004. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The representative's decision dated July 27, 2004, reference 02, is affirmed. The claimant is not able to work and available for work effective April 11, 2004. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

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