

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OCTAVIANO BAYLON
Claimant

APPEAL NO: 10A-UI-13225-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/08/10
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(34) – Unable to Perform Work

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 21, 2010, reference 02, that held he was not able to perform work due to an injury on April 19, 2010, and benefits are denied. A telephone hearing was held on November 9, 2010. The claimant, and his Interpreter, Patricia Vargas, participated. The employer did not participate.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time production worker from September 4, 2007 to April 19, 2010. The claimant suffered job related injuries and he was off work beginning April 19. The claimant's doctor imposed work restrictions of standing no more than four hours and sitting for four hours during a work shift. The employer did not have any work to offer the claimant. The department issued claimant a favorable decision on September 21, 2010 reference 01 regarding his employment separation that the employer did not appeal.

The claimant believes that he is able to perform work, but he does not have a doctor's release that he may perform work without restriction. The employer representative was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

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".

The administrative law judge concludes that the claimant is not able to perform work due to injury.

The claimant has not received an unrestricted work release from a doctor. The claimant needs to provide to the department a doctor statement that he has no work activity restrictions that would preclude from working a production or labor type job.

DECISION:

The department decision dated September 21, 2010, reference 02, is affirmed. Benefits are denied effective August 8, 2010.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs